Officia. Gazette

REPUBLIC OF THE PHILIPPINES

Edited at the Office of the President, under Commonwealth Act No. 638
Entered as second-class matter, Manila Post Office, December 26, 1905

VOL. 46 MANILA, PHILIPPINES, MAY 1950 NO. 5

Table of Contents

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 312

FIXING THE BOUNDARY LINE BETWEEN THE MUNICIPAL DISTRICTS OF SABLAN AND TUBA, BENGUET, MOUNTAIN PROVINCE.

Upon the recommendation of the Secretary of the Interior and pursuant to the provisions of section 68 of the Revised Administrative Code, the boundary line between the municipal districts of Sablan and Tuba, Benguet, Mountain Province, is hereby fixed as follows:

"From the old concrete boundary monument common to both municipal districts, at the foot of Irisan Bridge across Eleo River, westerly following the course of Eleo River downstream to the sitio of Batuan where this river flows into the Galiano River, and thence northwesterly downstream following the course of the Galiano River until it intersects the boundary line between the province of La Union and the Mountain Province."

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 313

REGULATING THE ISSUANCE OF BUILDING PERMITS TO AMERICAN NATIONALS OR ASSOCIATIONS FOR THE ERECTION OF WAR MEMORIALS OR MONUMENTS IN THE PHILIPPINES.

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby order that no building permit for the erection of any war memorial or monument in any place in the Philippines shall be

issued in favor of any American national or association without the previous recommendation of the American Battle Monuments Commission of the United States Government. Any memorial or monument constructed in violation of this order shall be demolished or remodelled at the expense of the builder in accordance with the order of the said commission.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 314

AMENDING SECTION 16 OF EXECUTIVE ORDER NO. 135, DATED MAY 4, 1948, ENTITLED "REGULATING THE ESTABLISHMENT, MAINTENANCE AND OPERATION OF FRONTONS AND BASQUE PELOTA GAMES (JAI-ALAI)."

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby amend section 16 of Executive Order No. 135, dated May 4, 1948, to read as follows:

"SEC. 16. *Installation of automatic electric totalizator.*—Any person or entity operating a fronton wherein betting in any form is allowed shall install in its premises within the period of two and one-half years from the date this Order takes effect, an automatic electrically operated totalizator, which shall clearly record each ticket purchased on every player in any game, the total number of tickets sold on each event, as well as the dividends that correspond to holders of winning numbers. This requirement shall, however, not apply to double events or forecast pool or to any betting made on the basis of a combination or grouping of players until a totalizator that can register such bets has been invented and placed on the market."

Done in the City of Manila, this 5th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 315

AMENDING EXECUTIVE ORDER NO. 259, DATED AUGUST 30, 1949, CREATING A FIRE PREVENTION BOARD.

Executive Order No. 259, dated August 30, 1949, creating a Fire Prevention Board, is hereby amended by including in the membership thereof, under Group One (Government), a representative of the Philippine Constabulary to be designated by the Commander, Philippine Constabulary.

Done in the City of Manila, this 5th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 316

FURTHER AMENDING EXECUTIVE ORDER NO. 278, DATED OCTOBER 10, 1949, AS AMENDED BY EXECUTIVE ORDER NO. 288, DATED OCTOBER 21, 1949, CREATING THE MUNICIPALITY OF JULITA, PROVINCE OF LEYTE.

Executive Order No. 278, dated October 10, 1949, as amended by Executive Order No. 288, dated October 21, 1949, is further amended by segregating the barrios of of San Pablo and Posod from the municipality of Julita, Province of Leyte, and restoring said barrios to the municipality of Burawen, same province.

Executive Order No. 288, dated October 21, 1949, is hereby revoked.

Done in the City of Manila, this 5th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 317

DECLARING CERTAIN BARRIOS, WHICH WERE THE SUBJECT MATTER OF THE FORMER BOUNDARY DISPUTE BETWEEN THE MUNICIPALITIES OF BARUGO AND SAN MIGUEL, BOTH OF THE PROVINCE OF LEYTE, A PART OF THE MUNICIPALITY OF BARUGO.

Upon the recommendation of the Secretary of the Interior and in accordance with the provisions of section 68 of the Revised Administrative Code, and pursuant to the result of the plebiscite held on December 31, 1949, by the Provincial Board of Leyte, the barrios of Santa Rosa, Tigbao, Ibag, Iberon, Duka, Hinugayan, and such portion of the barrio of Impo as has participated in said plebiscite, which are involved in the boundary dispute between the municipalities of Barugo and San Miguel, both of the Province of Leyte, are hereby declared and made a part of the municipality of Barugo, Province of Leyte.

All acts of jurisdiction heretofore actually exercised by the municipality of Barugo, over each and every barrio named in this order are hereby confirmed and ratified.

Done in the City of Manila, this 22nd day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 318

CREATING AN INTEGRITY BOARD TO RECEIVE AND PASS UPON ALL COMPLAINTS AGAINST THE CONDUCT OF ANY OFFICER OF THE GOVERNMENT, OR FOR GRAFT, CORRUPTION, DERELICTION OF DUTY OR ANY OTHER IRREGULARITY IN OFFICE; TO RECOMMEND TO THE PRESIDENT THE COURSE OF ACTION TO BE TAKEN IN EACH CASE AND TO INVESTIGATE SPECIFIC CASES THEREOF.

By virtue of the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby create a

board to be known as the "Integrity Board," composed of the following:

The Vice-President of the Philippines.....	Chairman
Dr. Jorge C. Bocobo	Vice Chairman
Justice Mariano H. de Joya	Member
Mrs. Pilar Hidalgo Lim	Member
Judge Pompeyo Diaz	Member and Executive Secretary

The Board shall have the following powers, duties and functions:

(*a*) To receive and pass upon all duly subscribed and sworn complaints against the conduct of any public official, and those for graft, corruption, dereliction of duty, or irregularity in office. All proceedings of the Board respecting any case under its consideration shall be confidential until the *prima facie* merits of the same shall have been established by the Board. After satisfying itself that a *prima facie* case exists, the Board shall, if the official concerned does not belong to the executive department, recommend to the President the course of action to be subsequently taken thereon.

(*b*) After such *prima facie* case shall have been established, to proceed to a thorough and complete investigation of any specific case of graft, corruption, dereliction of duty or irregularity in office involving any official of the executive department of the Government, and such other cases as the President may direct, and to submit to the President the record of such investigation, together with its findings and recommendations. In connection with such investigation, the Board is hereby granted all the powers of an investigating committee under section 71 and section 580 of the Revised Administrative Code, including the powers to summon witnesses, administer oaths and take testimonies or other evidence relevant to the investigation. The Board is also empowered and authorized to call upon any department, bureau, office, agency or instrumentality of the Government, including the corporations owned or controlled by it, for such information as it may require in the performance of its functions, and, for the purpose of securing such information, it shall have access to, and the right to examine, any books, documents, papers or records thereof subject to the limitations prescribed by existing law.

The Board may designate any one of its members, including the Chairman, to conduct the investigation of any case falling under paragraph (*b*) hereof.

Justice De Joya shall render service on either full or part time basis as may be authorized, and with compensation to be fixed, by the President. Any other member of the Board who is not a public official or not in the employ of the Government may also receive such compensation as may be fixed by the President.

The Board shall finish the investigation in each particular case within thirty days and its report and recommendations thereon shall be submitted to the President within fifteen days after the termination of the investigation.

Done in the City of Baguio, this 25th day of May, in the year of Our Lord, nineteen hundred and fifty and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 319

CREATING THE DEPARTMENT OF ECONOMIC COORDINATION

Pursuant to the authority conferred upon me by Republic Act No. 422, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. There is hereby created a Department of Economic Coordination which shall have supervision over the following Government-owned or controlled corporations and agencies:

1. The National Development Company and its subsidiaries:
   - (*a*) The Insular Sugar Refining Corporation
   - (*b*) The National Food Products Corporation
   - (*c*) The Cebu Portland Cement Company
   - (*d*) The Rice and Corn Production Administration
2. The Manila Railroad Company and its subsidiary:
   - (*a*) The Manila Hotel Company
3. The National Rice and Corn Corporation
4. The People's Homesite and Housing Corporation
5. The National Cooperatives and Small Business Corporation
6. The Metropolitan Water District
7. The National Land Settlement Administration
8. The National Power Corporation
9. The Philippine Charity Sweepstakes Office
10. The National Coconut Corporation
11. The Philippine Relief and Trade Rehabilitation Administration
12. The Government Service Insurance System
13. The National Airports Corporation
14. The Shipping Administration

15. The National Abaca and Other Fibers Corporation
16. The Rural Progress Administration
17. The National Tobacco Corporation

SEC. 2. The Department of Economic Coordination shall be under the direct control of the Secretary of Economic Coordination, exercising his functions subject to the general supervision and control of the President of the Philippines.

SEC. 3. The corporations, offices, agencies and instrumentalities herein placed under the supervision of the Department of Economic Coordination or such other entities as may hereafter or created therefrom pursuant to Republic Act No. 422 shall continue to operate in accordance with their respective charters until otherwise directed by the President in conformity with the provisions of said Act. The Secretary of the Department shall direct and coordinate the activities of such entities for the purpose of insuring efficiency and economy in their operations and the accomplishment of the objects for which said entities were created.

SEC. 4. The Secretary of Economic Coordination shall recommend to the President from time to time changes in the boards of directors or managing heads of stock and non-stock corporations or instrumentalities owned or controlled by the Government, and, subject to the approval of the President, vote the stocks owned by the Government in said corporations.

SEC. 5. The amounts necessary for the salaries of personnel, equipment and supplies and other sundry expenses of the Department of Economic Coordination shall be contributed by the different corporations and agencies under its jurisdiction in such proportions as may be determined by the Secretary of Economic Coordination with the approval of the President: *Provided, however,* That the appropriations for this purpose shall be included in the general appropriation acts of the National Government.

SEC. 6. The officers and employees of the Department of Economic Coordination and of the different corporations and agencies under it that may hereafter be employed shall be subject, in all respects, to the application of the Civil Service rules and regulations, as in the case of the other officers and employees of the Government.

SEC. 7. All laws, executive orders, administrative orders or proclamations or parts thereof inconsistent with any provision of this Order are hereby repealed or modified accordingly. The Government Enterprises Council created under Executive Order No. 93, dated October 4, 1947, and the Office of the Economic Administrator created under Executive Order No. 300, dated January 7, 1950, are

hereby abolished, and all references in any law, executive order, administrative order or proclamation to the Government Enterprises Council and the Economic Administrator shall be deemed references to the Department of Economic Coordination and to the Department Head thereof, respectively.

SEC. 8. This Order shall take effect upon its promulgation.

Done in the City of Baguio, this 25th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 320

AMENDING EXECUTIVE ORDER NO. 242, DATED JULY 9, 1949 BY REMOVING THE MAXIMUM AGE LIMITS THEREIN PRESCRIBED FOR APPOINTMENT OF RESERVE OFFICERS INTO THE REGULAR FORCE, ARMED FORCES OF THE PHILIPPINES.

Pursuant to the authority vested in me by Republic Act No. 207, I, Elpidio Quirino, President of the Philippines, do hereby order that Executive Order No. 242, Prescribing the Rules and Regulations for Appointment of Reserve Officers into the Regular Force, Armed Forces of the Philippines, shall be and is hereby amended by:

(1) Deleting entirely section 6 of said Order;
(2) Designating sections 7, 8, 9, 10, and 11 of the said Order as sections 6, 7, 8, 9, and 10, respectively.

Done in the City of Baguio, this 27th day of May, in the year of our Lord, nineteen hundred and fifty, and of the independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 176

REVOKING PROCLAMATION NO. 672, SERIES OF 1934, AND DECLARING THE LAND RESERVED THEREUNDER, SITUATED IN THE MUNICIPALITY OF SAN JOSE, PROVINCE OF MINDORO, ISLAND OF MINDORO, OPEN TO DISPOSITION UNDER THE PUBLIC LAND ACT.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 88 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 672, series of 1934, and declare the land reserved thereunder open to disposition under the provisions of the said Act.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 177

RESERVING FOR OFFICE, STORE AND WAREHOUSE SITE PURPOSES OF THE PHILIPPINE RELIEF AND TRADE REHABILITATION ADMINISTRATION A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF JOLO, PROVINCE OF SULU, ISLAND OF JOLO.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for office, store and warehouse site purposes, under the administration of the Philippine Relief and Trade Rehabilitation Administration, subject to private rights, if any

there be, a parcel of the public domain situated in the municipality of Jolo, Province of Sulu, Island of Jolo, and more particularly described in the Bureau of Lands Plan Ir–1021–D, to wit:

A parcel of land (as shown on plan Ir–1021–D, G.L.R.O. record No. .....), situated in the poblacion, municipality of Jolo, Province of Sulu, Island of Jolo. Bounded on the NE, by property of Eugenio Suarez; on the SE., by public land; on the SW., by road and on the NW., by Calle Sanchez. Beginning at a point marked "1" on plan, being N. 2° 17'W., 164.78 m. from B.L.L.M. 1, Mt. Dajo cadastre 99, thence S. 45° 51'E., 12.56 m. to point 2; thence S. 49° 18'W., 0.66 m. to point 3; thence S. 49° 06'W., 14.22 m. to point 4; thence N. 42° 47'W., 6.50 m. to point 5; thence N. 25° 52'E., 15.25 m. to point of beginning; containing an area of 139 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by old P.L.S. marked on cemented pavement; point 2, by cross on W/G. I. spike on concrete basement; and points 3, 4 and 5, by P.L.S. cylindrical concrete monuments. Bearings true, declination 1° 09'E., date of survey, October 1, 1949, and that of the approval, October 29, 1949.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 178

EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 148, DATED SEPTEMBER 30, 1949, AND RESERVING FOR SITE PURPOSES OF THE METROPOLITAN WATER DISTRICT LOT 4–A, PSD–27342 (LOT 4–B, PSD–27369), AND CERTAIN OTHER PARCELS OF LAND BELONGING TO THE PRIVATE DOMAIN OF THE GOVERNMENT SITUATED IN THE DISTRICT OF ERMITA, CITY OF MANILA, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 64 (*e*) of the Revised Administrative

Code, I hereby exclude from the operation of Proclamation No. 148, dated September 30, 1949, and reserve for site purposes of the Metropolitan Water District, subject to private rights, if any there be, Lot 4–A, Psd–27342 (Lot 4–B, Psd–27369) and certain other parcels of land belonging to the private domain of the Government, situated in the District of Ermita, City of Manila, Island of Luzon, and more particularly described in the Bureau of Lands plan Psd–27342 and Swo–24312, to wit:

LOT 4–A. LOT 4–B, Psd–27369) Psd–27342
(To be acquired by the Metropolitan Water District)

A parcel of land (lot 4–A of the subdivision plan Psd–27342, being a portion of lot 4, block 304 of the cadastral survey of the City of Manila, G.L.R.O. cadastral record No.....), situated in the N. and W., by lot 3–A of the subdivision plan; and on the SE. and S., by lot 4–B of the subdivision plan. Beginning at a point marked "1" on plan, being N. 9° 24′ W., 1,048.33 m. from B.L.L.M. 47, Manila cadastre 13, thence N. 2° 19′ W., 5.13 m. to point "2"; thence N. 2° 30′ W., 33.52 m. to point "3"; thence N. 87° 44′ E., 74.38 m. to point "4"; thence S. 38° 41′ W., 61.83 m. to point "5"; thence S. 88° 24′ W., 26.24 m. to the point of beginning, containing an area of 1,956.3 square meters more or less. All point referred to are indicated on the plan and are marked on the ground as follows: points 1 and 5, by P. L. S. concrete monument, and the rest, by *old* G. I. spikes on wall; bearings true; declination, variable; date of the original survey, August, 1919—March, 1920 and that of the subdivision survey, Aug. 29, 1949.

LOT 3–A. Psd–27342
(To be acquired by the Metropolitan Water District)

A parcel of land (lot 3–A of the subdivision plan Psd–27342, being a portion of lot 3, block 304 of the cadastral survey of the City of Manila, G.L.R.O. cadastral record No. .....), situated in the District of Ermita, City of Manila. Bounded on the N., by lot 1–A of plan Psd–12841 and lot 9, block 304, Manila cadastral; on the NE., by Pasig River; on the E., by lot 4–A of the subdivision plan; on the S., by lot 4–A and 3–B of the subdivision plan; and on the W., by Calle Arroceros. Beginning at a point marked "1" on plan, being N. 16° 38′ W., 1,075.42 m. from B.L.L.M. 47, Manila cadastre 13; thence N. 1° 37′ W., 50.00 m. to point "2"; thence N. 88° 24′ E., 134.25 m. to point "3"; thence N. 88° 54′ E., 68.20 m. to point "4"; thence S. 55° 04′ E., 6.77 m. to point "5"; thence S. 34° 25′ E., 0.88 m. to point "6"; thence S. 58° 04′ W., 2.25 m. to point "7"; thence S. 47° 41′ E., 5.75 m. to point "8"; thence S. 87° 44′ W., 74.38 m. to point "9"; thence S. 2° 30′ E., 33.52 m. to point "10" thence S. 2° 19′ E., 5.13 m. to point "11"; thence S. 88° 24′ W., 136.77 m. to the point of beginning, containing an area of 7,573.9 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1 and 11, by P. L. S. concrete monuments; and the rest, by old G. I. spikes on wall; bearings true; declination, variable; date of the original survey, Aug., 1919—March, 1920 and that of the subdivision survey, August 29, 1949.

SWO–24312, LOT 9, BLOCK 304—MANILA CADASTRE
(The Metropolitan Water District)

"A parcel of land (lot 9, block 304 of the cadastral survey of the City of Manila, G.L.R.O. cadastre record No.———), situated in the District of Ermita, City of Manila. Bounded on the W.

and N., by lot 1, Block 304, Manila cadastre; on the NE., by Pasig River; and on the S., by lot 3, block 304, Manila cadastre (U.S. military reservation). Beginning at a point marked "1" on plan, being N. 9° 11′ W., 1,098.25 m. from B.L.L.M. 47, Manila cadastre, thence N. 23° 07′ E., 2.60 m. to point "2"; thence N. 2° 34′ W., 10.08 m. to point "3"; thence N. 88° 31′ E., 50.34 m. to point "4"; thence N. 87° 28′ E., 0.68 m. to point "5"; thence east 0.40 m. to point "6"; thence N. 17° 32′ E., 0.80 m. to point "7"; thence S. 55° 58′ E., 0.93 m. to point "8"; thence S. 37° 48′ W., 1.35 m. to point "9"; thence S. 54° 21′ E., 8.97 m. to point "10"; thence N. 35° 55′ E., 1.21 m. to point "11"; thence E. 54° 36′ E., 0.93 m. to point "12"; thence S. 36° 52′ W., 1.20 m. to point "13"; thence S. 53° 30′ E., 9.95 m. to point "14"; thence S. 88° 54′ W., 68.20 m. to point of beginning; containing an area of 747.9 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by old G. I. S. on wall; point 14, by old monument; and the rest, by G. I. S. on Walls; bearings true; declination, variable; date of the cadastral survey of Aug., 1919—March, 1950."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 179

REVOKING PROCLAMATION NO. 269, DATED APRIL 29, 1938, AND RESERVING THE LAND COVERED THEREBY FOR COAST AND GEODETIC SURVEY PURPOSES SITUATED IN THE PORT AREA, CITY OF MANILA, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to sections 88 and 83 of Commonwealth Act No. 141, as amended, I hereby revoke Proclamation No. 269, dated April 29, 1938, and reserve the land covered thereby for coast and geodetic survey purposes under the administration of the Bureau of Coast and Geodetic Survey, subject to private rights, if any there be.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 180

RESERVING FOR SCHOOL OF FISHERY SITE PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE BARRIOS OF SILANGA AND ERENAS, MUNICIPALITY OF CATBALOGAN, PROVINCE OF SAMAR, ISLAND OF SAMAR.

Upon the recommendation of the Secretary of Agriculture and Natural Resources, and pursuant to the provisions of section 64 (*d*) of the Revised Administrative Code, I hereby withdraw from sale or settlement and reserve for School of Fishery site purposes under the administration of the Director of Fisheries, subject to private rights, if any there be, certain parcels of the public domain, situated in the barrios of Silanga and Erenas, municipality of Catbalogan, Province of Samar, Island of Samar, and more particularly described in the Bureau of Lands plan SWO–24205, to wit:

LOT 811. CATBALOGAN CADASTRE
(The Bureau of Fisheries)

"A parcel of land (lot 811 of the cadastral survey of Catbalogan, G.L.R.O. cadastral record No.———), situated in the barrios of Silanga and Erenas, Muncipality of Catbalogan, Province of Samar. Bounded on the NW. and N., by Creek; on the SE. and S., by lot 812, Catbalogan Cadastre; and on the W., by provincial road. Beginning at a point marked "1" on plan, being S. 12°-54′ W., 64.66 m. from B.B.M. 1, Catbalogan cadastre, thence N. 26° 09′ E., 31.84 m. to point "2"; thence N. 25° 18′ E., 37.24 m. to point "3"; thence N. 0° 48′ W., 20.92 m. to point "4"; thence N. 13° 22′ W., 18.30 m. to point "5" thence N. 43° 17′ E., 24.42 m. to point "6"; thence N. 34° 11′ E., 32.80 m. to point "7"; thence S. 88° 39′ E., 67.86 m. to point "8"; thence N. 81° 05′ E., 112.18 m. to point "9"; thence S. 65° 29′ E., 48.78 m. to point "10"; thence S. 58° 05′ W., 328.34 m. to point "11"; thence S. 87° 58′ W., 25.57 m. to point "12"; thence N. 31° 58′ E., 38.93 m. to the point of beginning; containing an area of 23,571 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 1, 2, 3, 4, 5, and 12, by B.L. concrete monuments; points 10 and 11, G.I.S. on crosses on trees; and the rest, by stakes; bearings true; declination 1° 26′ E., date of the cadastral survey, Aug., 1928—March, 1931.

NOTE.—Lot 811 was surveyed for the Government of the Philippine Islands (Public Land)"

LOT 828. CATBALOGAN CADASTRE
(The Bureau of Fisheries)

"A parcel of land (lot 828 of the cadastral survey of Catbalogan, G.L.R.O. cadastral record No.———), situated in the barrio of Silanga, municipality of Catbalogan, Province of Samar. Bounded on the NE., by lot 824, Catbalogan cadastre; on the E., SE. and S., by Creek; on the W., by Provincial road and lot 829, Catbalogan cadastre; and on the NW., by lots 829, 873 and 824, Catbalogan cadastre. Beginning at a point marked "1" on plan, being N. 1° 24′ E., 80.56 m. from B.B.M. 1, Catbalogan cadastre; thence N. 17° 27′ W., 22.95 m. to point "2"; thence N. 25° 30′ W., 59.63 m. to point "3" thence N. 50° 48′ E., 42.76 m. to point "4"; thence N. 3° 04′ W., 54.93 m. to point "5"; thence N. 73° 28′ E., 17.88 m. to point "6"; thence S. 43° 58′ E., 105.12 m. to point "7"; thence N. 54° 12′ E., 226.13 m. to point "8"; thence S. 6° 51′ E., 89.83 m. to point "9"; thence S. 79° 14′ W., 13.17 m. to point "10"; thence S. 1° 09′ W., 20.53 m. to point "11"; thence S. 16° 35′ W., 12.20 m. to point "12"; thence S. 53° 12′ W., 46.83 m. to point "13"; thence S. 61° 14′ W., 37.35 m. to point "14"; thence S. 58° 17′ W., 15.69 m. to point "15"; thence S. 2° 01′ W., 10.27 m. to point "16"; thence S. 74° 14′ W., 69.20 m. to point "17"; thence N. 84° 58′ W., 76.75 m. to point "18"; thence S. 28° 25′ W., 22.13 m. to point "19"; thence N. 88° 39′ W., 27.55 m. to the point of beginning, containing an area of 32,718 square meters, more or less. All points referred to are indicated on the plant and are marked on the ground as follows: points 1, 2, 3, 4, 6, 7, and 8, by B.L. concrete monuments; point 5, by G.I.S. on cross on tree; and the rest, by stakes; bearings true; declination 1° 26′ E.; date of the cadastral survey, Aug., 1928—March, 1931."

NOTE.—Lot 828 was surveyed for the Government of the P. I. (Public Land)

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 181

RESERVING FOR CONSTABULARY SITE PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE BARRIO OF DADIANGAS, MUNICIPALITY OF BUAYAN, PROVINCE OF COTABATO, ISLAND OF MINDANAO.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for Constabulary site purposes, under the administration of the Philippine Constabulary, subject to private rights, if any there be, certain parcels of the public domain, situated in the barrio of Dadiangas, municipality of Buayan, Province of Cotabato, Island of Mindanao, and more particularly described in the Bureau of Lands plan IR–1007, to wit:

LOT 1, IR–1007.
(Proposed Military Reservation)
(Philippine Constabulary)

A parcel of land (lot 1 as shown on plan IR–1007, G.L.R.O. record No.———), situated in the barrio of Dadiangas, municipality of Buayan, Province of Cotabato. Bounded on the NE., by lot 2 of plan Ir–1007; on the SE., by lot 3 of plan Ir–1007; and on the SW., W. and NW., by property of Francisco Camahalan (lot 2, BSD –10305). Beginning at a point marked "1" on plan, being N. 41° 35′ E., 2,298.58 m. from B.L.B.M. 1, Bo. of Makar, Mun. Dist. of Buayan, Cotabato, thence S. 67° 09′ W., 52.60 m. to point "2"; thence N. 56° 49′ W., 80.24 m. to point "3"; thence N. 56° 51′ W., 143.83 m. to point "4"; thence N. 38° 20′ E., 53.25 m. to point "5"; thence N. 24° 19′ E., 35.69 m. to point "6"; thence N. 9° 36′ W., 70.64 m. to point "7"; thence N. 73° 21′ E., 132.51 m. to point "8"; thence S. 14° 31′ E., 78.10 m. to point "9"; thence S. 14° 25′ E., 215.22 m. to the point of beginning; containing an area of 40,811 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 2 and 9 by old concrete monuments marked B. L.; point 6, by nail in cross tree; point 7, by concrete monument marked P.L.S.; and the rest, by concrete monuments marked B.L.; bearings true; declination 1° 49′ E., date of survey, April 27–28, 1949 and that of the approval, Sept. 5, 1949.

NOTE:—Lot 1 is identical to Lot 1, Bsd–10305."

LOT 2, IR–1007.
(Proposed Military Reservation), (Philippine Constabulary)

A parcel of land (lot 2 as shown on plan Ir–1007, G.L.R.O. record No.....), situated in the barrio fo Dadiangas, municipality of Buayan, Province of Cotabato. Bounded on the NE., by properties of Pedro Acharon (lot 3, Bsd–10305), Tan Wahab and Pedro Acharon (lot 5, Bsd–10305); on the SE., by properties of Tan Wahab and Pedro Acharon (lot 5, Bsd–10305) and lot 3 of plan Ir–1007; on the SW., by lot 1 of plan Ir–1007; and on the NW., by properties of Pedro Acharon (lot 3, Bsd–10305) and Tan Wahab. Beginning at a point marked "1" on plan, being N. 41° 35′ E., 2,298.58 m. from B.L.B.M. 1, barrio of Makar, municipality district of Buayan, Province of Cotabato, thence N. 14° 25′ W., 215.22 m. to point "2"; thence N. 14° 31′ W., 78.10 m. to point "3"; thence N. 73° 52′ E., 94.84 m. to point "4"; thence S. 16° 22′ E., 229.27 m. to point "5"; thence N. 48° 53′ E., 86.82 m. to point "6"; thence N. 69° 10′ E., 52.70 m. to point "7"; thence S. 37° 53′ E., 11.07 m. to point "8"; thence S. 69° 49′ W., 57.06 m. to point "9"; thence S. 48° 52′ W., 86.69 m. to point "10"; thence S. 17° 16′ E., 41.01 m. to point "11"; thence S. 66° 52′ W., 105.85 m. to the point of beginning; containing an area of 29,904 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 2 and 6, by old concrete monuments marked B.L.; and the rest, by concrete monuments marked B.L.; bearings

true; declination 1° 49′ E.; date of survey, April 27–28, 1949 and that of the approval, Sept. 5, 1949.

NOTE:—Lot 2 is identical to Lot 4, Bsd–1030 per cent"

LOT 3, IR–1007.

(Proposed Military Reservation), (Philippine Constabulary)

A parcel of land (lot 3 as shown on plan Ir–1007, G.L.R.O. record No.———), situated in the barrio of Dadiangas, municipality of Buayan, Province of Cotabato. Bounded on the NE., by property of Mahadial Diamad; on the SE., by property of Pedro Acharon (lot 5, Bsd–10305); on the S. and SW., by property of Mahadial Diamad; and on the NW., by lots 1 and 2 of plan Ir–1007. Beginning at a point marked "1" on plan, being No. 41° 35′ E., 2,298.58 m. from B.L.B.M. 1, barrio of Makar, Mp. Dist. of Buayan, Cotabato, thence N. 66° 52′ E., 105.85 m. to point "2"; thence S. 8° 54′ E., 129.05 m. to point "3"; thence S. 53° 18′ W., 38.37 m. to point "4"; thence N. 84° 29′ E., 53.19 m. to point "5"; thence N. 44° 35′ W., 116.96 m. to point "6"; thence N. 67° 09′ E., 52.60 m. to the point of beginning; containing an area of 14,804 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 3, 4, and 5, by Crosses on Trees; point 6, by old concrete monument marked B.L.; and the rest, by concrete monuments marked B.L.; bearings true; declination 1° 49′ E.; date of survey, April 27–28, 1949 and that of the approval, Sept. 5, 1949.

NOTE:—Lot 3 is identical to Lot 3, Ir–1007."

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 182

RESERVING FOR RAILROAD RIGHT-OF-WAY PURPOSES A CERTAIN PARCEL OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF KIDAPAWAN, PROVINCE OF COTABATO, ISLAND OF MINDANAO.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for railroad right-of-way purposes, under the administration of the Manila Railroad Company, subject to private

rights, if any there be, a parcel of the public domain situated in the municipality of Kidapawan, Province of Cotabato, Island of Mindanao, and more particularly described in the Bureau of Lands Plan Psd–18611, to wit:

LOT No. 3–A. Psd–18611.
(Mindanao Motor Line)

"A parcel of land (lot No. 3–A of the subdivision plan Psd–18611 (S.W.O.–23775), being a portion of lot No. 3, block No. 22 of Kidapawan public lands subdivision, G.L.R.O. record No. ———), situated in the barrio of Lanao, municipality of Kidapawan, Province of Cotabato. Bounded on the NE., by road (10 m. wide); on the SE., by lot No. 3–B of the subdivision plan Psd–18611; on the SW., by Cotabato–Davao national highway (60.00 m. wide); and on the NW., by lot No. 2, block No. 22 of Kidapawan public lands subdivision, Pls–59. Beginning at a point marked "1" on plan, being S. 79° 24′ E., 193.16 meters more or less from B.L.L.M. No. 14 of Kidapawan, Pls–59; thence N. 14 ° 17′ E., 228.59 m. to point "2"; thence S. 77° 03′ E., 100.02 m. to point "3"; thence S. 14° 34′ W., 216.01 m. to point "4"; thence N. 84° 17′ W., 100.03 m. to the point of beginning; containing an area of 22,103 square meters, more or less. All points referred to are indicated on the plan; and on the ground, are marked as follows: points "1" and "2" by old B.L. concrete monuments 15 by 60 cm.; and points "3" and "4" by P.L.S. concrete monuments 15 by 60 cm; bearings true; declination 2° 01′ E.; date of the original survey, September, 1936–December, 1937; and that of the subdivision survey, October 25, 1940.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 183

RESERVING FOR ADDITIONAL MARKET SITE PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF MALABON, PROVINCE OF RIZAL, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended,

I hereby withdraw from sale or settlement and reserve for additional market site purposes, under the administration of the municipality of Malabon, subject to private rights, if any there be, certain parcels of the public domain, situated in the municipality of Malabon, Province of Rizal, Island of Luzon, and more particularly described in the Bureau of Lands plan Mr–1013–D, to wit:

LOT 1. MR–1013–D

A parcel of land (lot 1 of plan MR–1310–D, situated in the barrio of Tañong, municipality of Malabon, Province of Rizal. Bounded on the NE. by F. Sevilla Boulevard; on the SE. by F. Sevilla Boulevard and provincial road to Navotas; on the SW. by lot 2 of the plan; and on the NW. by property of the municipal Government of Malabon (lot 1, S.W.O. 21985). Beginning at a point marked '1' on plan S. 15° 18′ W. 258.58 m. from B.L.L.M. 1, municipality of Malabon, Rizal; thence N. 17° 30′ W., 49.56 m. to point "2"; thence N. 63° 33′ E., 52.02 m. to point "3"; thence S. 20° 49′ E., 37.00 m. to point "4"; thence S. 14° 00′ E., 3.38 m. to point "5"; thence S. 8° 56′ E., 2.90 m. to point "6"; thence S. 1° 24′ W., 2.88 m. to point "7"; thence S. 11° 45′ W., 3.34 m. to point "8"; thence S. 50° 30′ W., 2.66 m. to point "9"; thence S. 63° 22′ W., 48.47 m. to the point of beginning; containing an area of 2,581 square meters, more or less. All points referred to are indicated on the plan and on the ground, points "1" is marked by old concrete monuments 15 by 60 cm.; points "2" and "3" are marked by old iron tubes 15 cm. diameter by 1.00 m.; "4", "5", "6", "7", "8" and "9" are marked by old tacks on stakes; bearings true; declination 0° 48′ E.; date of the survey December 20, 1948. Approved January 24, 1950."

A parcel of land (lot 2 of plan MR–1013–D), situated in the barrio of Tañong, municipality of Malabon, Province of Rizal. Bounded on the NE. by lot 1 of the plan; on the SE. by provincial road to Navotas; on the SW. by Malabon–Navotas river; and on the NW. by property of the municipal government of Malabon (lot 2, S.W.O. 21985). Beginning at a point marked "1" on plan, being S. 26° 15′ W., 316.12 m. from B.L.L.M. 1, municipality of Malabon, Rizal, thence N. 8° 10′ W., 50 m. to point "2"; thence N. 63° 33′ E., 71.32 m. to point "3"; thence S. 17° 30′ E., 49.56 m. to point "4"; thence S. 64° 31′ W., 79.31 m. to the point of beginning; containing an area of 3,625 square meters, more or less. All points referred to are indicated on the plan and on the ground, point "1" is marked old PLS concrete monument 15 by 60 cm.; points "2" and "3" are marked old iron tubes 5 cm. diameter by 1.00 m., and point "4" is marked by old concrete monument 15 by 60 cm.; bearing true; declination 0° 48′ E.; date of the survey December 20, 1948. Approved January 24, 1950.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 184

MAKING PUBLIC THE TREATY OF FRIENDSHIP BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE FRENCH REPUBLIC.

WHEREAS, a Treaty of Friendship between the Republic of the Philippines and the French Republic, designed to strengthen the ties of friendship by which the two countries are united, was concluded and signed by the respective Plenipotentiaries of the two Governments at Paris, on June 26, 1947;

WHEREAS, the Senate of the Philippines, by its Resolution No. 49, adopted on May 4, 1948, concurred in the making of the said Treaty of Friendship, subject to the following reservation:

"RESOLVED, That the Senate of the Philippines concur, as it hereby concurs, in the Treaty of Friendship between the French Republic and the Republic of the Philippines which was concluded and signed at Paris on June twenty-six, nineteen hundred and forty-seven, with the understanding, that nothing in the treaty shall be construed as affecting, altering, amending or repealing any of the existing constitutional provisions, statutes, or laws, of the Republic of the Philippines prohibiting aliens, or limiting or regulating their rights to acquire, possess, and dispose of movable or immovable property, to establish and maintain schools of learning, to reside and travel, and to engage in trade, industry, and other pursuits."

WHEREAS, the said Treaty has been duly ratified and confirmed by the President of the Philippines subject to the reservation in the resolution of concurrence of the Philippine Senate, quoted above;

WHEREAS, the said Treaty has been duly ratified by the Government of the French Republic;

WHEREAS, the instruments of ratification of the two Governments were exchanged at Baguio, Philippines, on April 19, 1950; and

WHEREAS, it is stipulated in the said Treaty that it shall enter into force on the date of the exchange of the instruments of ratification.

NOW, THEREFORE, be it known that I, Elpidio Quirino, President of the Philippines, have caused the said Treaty, a certified copy of which is hereto annexed, to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the Republic of the Philippines and the citizens thereof, subject to the aforesaid reservation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 12th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 116

REPRIMANDING REGISTER OF DEEDS SOFRONIO M. FLORES OF ILOILO

This is an administrative case against Mr. Sofronio M. Flores, Register of Deeds of Iloilo, who stands charged with inefficiency in the discharge of his official duties.

It appears that on July 8, 1948, the General Land Registration Office called the attention of the respondent to the fact that his abstracts of collections for the months of July, 1947, to June, 1948, had not yet been received by that office and accordingly requested him to submit the same as soon as possible. This request was reiterated on August 16, 1948. On September 17, 1948, said office learned from the City Auditor of Iloilo that the abstracts corresponding to the period from July, 1946, to June 30, 1947, although already verified by the latter, were still kept in the office of the respondent and not mailed to the central office for no apparent reason whatsoever. It also learned that the respondent was not submitting to the auditor his monthly abstracts as they fell due but was allowing them to accumulate in his office. On September 30, 1948, the General Land Registration Office, besides informing him of the matters brought out by the city auditor, asked him to exert efforts to have the abstracts submitted for auditing purposes immediately after the end of each calendar month and not later than the fifth of the succeeding month and reminded him that his practice was in violation of accounting and auditing regulations. Abstracts for other months also fell due, and letters were likewise sent to him to forward them together with those previously called for. Said requests, however, remained unattended to until he was required to show cause why he should not be dealt with administratively.

It also appears that as of September 7, 1949, a total of 27 back reports—some of which even pertained to 1946—

had not been received by the central office. The respondent was accordingly warned that failure on his part to submit them on or before September 30, 1949, would cause the institution of administrative proceedings for his removal from the service unless satisfactory reasons be given for his failure to do so.

On September 30, 1949, the deadline for submitting the abstracts, the respondent informed the General Land Registration Office that the same had already been forwarded to it and at the same time submitted the following explanation: That owing to the last war the records, documents, titles, etc., of his office were in disorder after liberation; that as the office was leaking during rainy days, they had to move from one place to another in order to save important papers; that after liberation there was a mad rush for the reconstitution of records and, with his limited personnel, they had to give preference to the immediate need of the public, such as the issuance of titles to facilitate mortgages and other transactions, in line with the policy of the Government to enhance the rehabilitation and reconstruction of the country; that his office is handicapped by a shortage of office equipment, and the only typewriter with a long carriage, which is needed in the preparation of said abstracts, was being used for the annotation of entries on the certificates of title; that in the submission of said abstracts the intervention of the auditing office is also required; that they verbally called the attention of the one in charge to the pendency of said abstracts to be audited but that the latter replied that their office was also undermanned, etc.; and that the delay in the submission of these abstracts was not intentional nor wilfull but due to circumstances beyond his control.

Respondent's explanation is far from satisfactory. It is seen that the delay in the submission of his abstracts was partly due to the fact that he allowed them to accumulate in his office instead of submitting them for auditing purposes as they fell due. While the auditing process might have contributed in some way to the delay, this does not hold insofar as the abstracts for the period from September, 1946, to June, 1947, are concerned, it appearing that although they had already been verified by the office of the auditor prior to September 11, 1948, they were submitted to the central office only one year thereafter, or in September, 1949. That respondent had been behind for more than one year in his reports of collections which should have been submitted monthly plainly shows that he is remiss in the discharge of his duties.

Wherefore, respondent is hereby reprimanded and warned that similar conduct in the future will be dealt with more severely.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 117

AUTHORIZING THE FIRST NATIONAL SURETY & ASSURANCE CO., INC. TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, BONDS AND UNDERTAKINGS.

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for the doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body executive, legislative or judicial shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippines in the manner provided by the provisions of said Act No. 536, as amended, nor unless such corporation has by contract with the Government of the Philippines been authorized to become surety upon official recognizances, stipulations, bonds and undertakings; and

Whereas, the First National Surety & Assurance C., Inc., is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do hereby authorize the First National Surety & Assurance Co., Inc., to become a surety upon official recognizances, stipulations, bonds and undertakings in such manner and under such conditions as are provided by law, except that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Baguio, this 1st day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 118

CREATING A NATIONAL COMMITTEE TO TAKE CHARGE OF THE FOURTH ANNIVERSARY CELEBRATION OF THE REPUBLIC OF THE PHILIPPINES ON JULY 4, 1950.

WHEREAS, the fourth of July, 1946, is of great historical importance to the Filipino people because it was on that day that Philippine Independence was granted and the Republic of the Philippines proclaimed and inaugurated; and

WHEREAS, in order to impress upon our people, especially the youth, the significance of that important event in our national life, it is fitting and proper that the day be observed with appropriate ceremonies;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby constitute and create a National Committee to formulate plans and devise ways and means for the appropriate celebration of the Fourth Anniversary of the Re-

public of the Philippines. The Comittee shall be composed of the following:

Hon. Carlos P. Romulo	Chairman
Hon. Sotero Baluyot	Member
Hon. Primitivo Lovina	"
Hon. Prudencio Langcauon	"
Hon. Pio Joven	"
Hon. Asuncion A. Perez	"
Maj. Gen. Mariano N. Castañeda	"
Brig. Gen. Alberto Ramos	"
Hon. Manuel de la Fuente	"
Mr. Aurelio Periquet	"
Mr. Benito Legarda	"
Dr. Vidal A. Tan	"
Mrs. Francisca T. Benitez	"
Mrs. Pilar H. Lim	"
Mr. Exequiel Villacorta	"
Mr. Vicente Lontok	Executive Secretary

The Committee shall meet at the call of the Chairman and for the purpose of discharging its functions, may create such sub-committees as may be necessary.

Done in the City of Manila, this 12th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 119

CREATING A COMMITTEE TO STUDY AND PASS UPON THE PROPOSAL OF THE ITALIAN FIRM, COMPANIA GENERALE IMPIANTI OF GENOA, ITALY, FOR THE FURNISHING OF MACHINERY TO THE NATIONAL POWER CORPORATION.

WHEREAS, public interest requires the urgent completion of the project of the National Power Corporation for the harnessing of a unit of the Maria Cristina Falls in Mindanao for the establishment of a power and fertilizer plant;

WHEREAS, an Italian firm by the name of Compania Generale Impianti of Genoa, Italy, has proposed to the National Power Corporation the sale of the machinery needed for the establishment of said power and fertilizer plant partly on the cash basis and largely on the barter

arrangement and the proposal has been accepted by the National Power Corporation;

WHEREAS, pending the formalization of the corresponding contract, several requests from other suppliers have been made to furnish the same machinery on competitive basis;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby create a committee composed of the Vice-President of the Philippines as Chairman, and the Honorable Pio Pedrosa as Secretary of Finance and Chairman of the National Economic Council; the Honorable Miguel Cuaderno, Governor of the Central Bank; Mr. Jose Paez; a private contractor, and Mr. Aurelio Periquet, president of the Chamber of Commerce, as members, to study and pass upon the feasibility and economic aspect of the aforesaid project, particularly on the necessity of adopting the special arrangement with the Italian firm contemplated by the National Power Corporation or on the advisability of public bidding for the acquisition of the necessary machinery.

The Committee shall submit its report to the President within ten days from the date of this Order.

Done in the City of Baguio, this 25th day of May, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

REPUBLIC ACTS

Enacted during the First Session of the Second Congress, Republic of the Philippines, from January 23 to May 18, 1950

H. No. 434

[REPUBLIC ACT NO. 425]

AN ACT APPROPRIATING ADDITIONAL FUNDS FOR THE OPERATION AND MAINTENANCE OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES DURING THE PERIOD FROM JULY FIRST, NINETEEN HUNDRED AND FORTY-NINE TO JUNE THIRTIETH, NINETEEN HUNDRED AND FIFTY, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sums, or so much thereof as may be necessary, are appropriated out of any funds in the Philippine Treasury not otherwise appropriated, during the period from July first, nineteen hundred and forty-nine to June thirtieth, nineteen hundred and fifty, for the purposes specified hereunder:

A.—CONGRESS OF THE PHILIPPINES

(1) SENATE

I.—SALARIES AND WAGES

1. Salaries and wages—Regular Force	₱120,100.00
2. Supplementary force	100,100.00
Total for salaries and wages	₱220,200.00

II.—SUNDRY EXPENSES

1. Other services	₱9,000.00
2. Consumption of supplies and materials	15,000.00
3. Printing and binding reports, documents and publications	8,000.00
4. Maintenance and repair of equipment	8,000.00
Total for sundry expenses	₱40,000.00

III.—FURNITURE AND EQUIPMENT

1. For the purchase of furniture and equipment, including the purchase of motor vehicles	₱30,000.00
Total for furniture and equipment	₱30,000.00

IV.—SPECIAL PURPOSES

1. For traveling and other expenses of the Senate President, Senate Committees and subordinate personnel when authorized by the President of the Senate to undertake studies in and outside of the Philippines	₱50,000.00
2. For the proportionate share of the Senate in the expenses incurred by the Joint Congressional Committee on Education	20,000.00
3. For other services, including transportation, investigation of any Senate Committee and additional secretarial services for the members of the Senate, or expenses incurred by direction of the President of the Senate	50,000.00
Total for special purposes	₱120,000.00

V.—SUMMARY

Total for salaries and wages	₱220,200.00
Total for sundry expenses	40,000.00
Total for furniture and equipment	30,000.00
Total for special purposes	120,000.00
Total amount available for the Senate	₱410,200.00

(2) HOUSE OF REPRESENTATIVES

I.—SALARIES AND WAGES

1. Salaries of two new Members of the House of Representatives	₱7,277.42
2. Readjustment of salaries and wages for the permanent personnel of the House of Representatives	37,620.00

MISCELLANEOUS

1. For secretarial and clerical service to two new Members of the House of Representatives	3,032.26
2. For supplementary force	200,000.00
Total for salaries and wages	₱247,929.68

II.—SUNDRY EXPENSES

1. Traveling expenses of Members	₱200,000.00
Total for sundry expenses	₱200,000.00

IV.—SPECIAL PURPOSES

1. For expenses of the Electoral Tribunal	₱80,000.00
Total for special purposes	₱80,000.00

V.—SUMMARY

Total for salaries and wages	₱247,929.68
Total for sundry expenses	200,000.00
Total for special purposes	**80,000.00**
Total amount available for the House of Representatives	₱527,929.68

B.—OFFICE OF THE PRESIDENT

II.—SUNDRY EXPENSES

6. Additional appropriation for consumption of supplies and materials for the subsistence of the inmates of Welfareville	₱282,195.00

IV.—SPECIAL AND GENERAL PURPOSES

9. Additional appropriation for the payment of pensions to veterans of past Philippine revolutions or wars in accordance with the provisions of Commonwealth Act No. 605, including the operating expenses of the Board on Pension for Veterans	107,000.00
20. For salaries of personnel and maintenance of the Office of the Coordinator of National Intelligence, as provided in Executive Order No. 167, series of 1948	100,000.00
21. For operating expenses of a board created under Administrative Order No. 89, dated May 18, 1949, to take charge of listing deserving unrecognized guerrilla organizations so as to establish a basis upon which to estimate the total amount needed for the payment of back pay to their members	50,000.00
22. For contribution in kind of the Philippine Government to the United Nations International Children's Emergency Fund (UNICEF)	400,000.00

BUREAU OF PRINTING REVOLVING FUND

SALARIES AND WAGES

155*a*. For the standardization and adjustment of the salaries and wages of the personnel of the Bureau of Printing	₱175,260.00	
Amount to be paid out of the Bureau of Printing Revolving Fund	(175,260.00)	----------
Total for the Office of the President		₱939,195.00

C.—OFFICE OF THE VICE-PRESIDENT

I.—SALARIES AND WAGES

1. The Vice-President of the Philippines at ₱15,000	₱7,600.00
Total for the Office of the Vice-President	₱7,600.00

D.—DEPARTMENT OF FOREIGN AFFAIRS

I.—SALARIES AND WAGES

114*a*. For the employment of two telephone operators at ₱1,560 per annum and of laborers and janitors at wages not exceeding ₱3.50 per day each	₱9,000.00

IV.—SPECIAL PURPOSES

7. Additional appropriation for the operation and maintenance of the Foreign Service of the Republic of the Philippines	411,870.00

SALARIES AND WAGES

(*v*) PHILIPPINE LEGATION, BUENOS AIRES, ARGENTINA

(Diplomatic Post, class II)

THE MINISTER

(1) The Minister	₱20,000.00

Diplomatic Staff

(2) One foreign affairs officer, class I	9,000.00
(3) One foreign affairs officer, class III	6,000.00
(4) One commercial attaché (by detail).	

Technical, Administrative and Clerical Personnel

(5) One administrative assistant	4,800.00
Supplemental salary	2,400.00
(6) One finance and property officer	3,960.00
Supplemental salary	2,040.00
(7) One technical assistant	3,960.00
Supplemental salary	2,040.00
(8) One clerk-stenographer	2,580.00
Supplemental salary	2,220.00
(9) For the employment of additional personnel as the needs of the service may require	18,750.00
Total for the Philippine Legation in Buenos Aires, Argentina	₱77,750.00

(*w*) PHILIPPINE MISSION IN TOKYO, JAPAN

(Diplomatic Post, class II)

THE MINISTER

(1) The Minister	₱20,000.00

Diplomatic Staff

(2) One foreign affairs officer, class II	7,500.00

Technical, Administrative and Clerical Staff

(3) One executive assistant	4,800.00
Supplemental salary	2,400.00
(4) One technical assistant	4,500.00
Supplemental salary	2,700.00
(5) One finance and property officer	3,120.00
Supplemental salary	2,880.00
(6) One interpreter-writer (Japanese)	2,400.00
Supplemental salary	1,560.00
(7) One clerk-stenographer	1,920.00
Supplemental salary	2,580.00
(8) One trade assistant	4,800.00
Supplemental salary	300.00
(9) One secretary-stenographer	2,940.00
Supplemental salary	1,860.00
(10) One clerk-messenger	1,440.00
Supplemental salary	1,680.00
(11) For the employment of additional personnel as the needs of the service may require	11,640.00
Total for the Philippine Mission in Tokyo, Japan	₱81,020.00

(*x*) MISCELLANEOUS

(1) Additional appropriaiton for supplementary salaries of foreign affairs officers, at tachés and advisers for services rendered outside the Philippines at annual rates equivalent to not more than fifty per centum of their basic annual salaries:	
Philippine Legation in Buenos Aires, Argentina	₱10,750.00
Philippine Mission in Tokyo, Japan	3,750.00
	₱14,500.00
Total for salaries and wages	₱173,270.00

(*y*) SUNDRY EXPENSES

Philippine Legation in Buenos Aires, Argentina	₱70,000.00

Philippine Mission in Tokyo, Japan	42,000.00
Total for sundry expenses	₱112,000.00

(*z*) FURNITURE AND EQUIPMENT

(1) For the purchase of furniture and equipment:	
Philippine Legation in Buenos Aires, Argentina	₱15,000.00
Philippine Mission in Tokyo, Japan	10,000.00
Total for furniture and equipment	₱25,000.00

(*a–1*) SPECIAL EXPENSES

(1) Additional appropriation for living quarters allowances or for rentals of suitable quarters of ambassadors, the Chief of Mission to the United Nations, ministers, charge d'affairs, foreign affairs officers, advisers and attachés while serving abroad, at such rates to be determined by the Secretary of Foreign Affairs: PROVIDED, That commutation thereof may be allowed for an amount equivalent to three months counting from the date of arrival at the post of the officer concerned:	
Philippine Legation in Buenos Aires, Argentina	₱30,600.00
Philippine Mission in Tokyo, Japan	4,800.00
	₱35,400.00

(2) Additional appropriation for post allowances of ambassadors, the Chief of Mission to the United Nations, ministers, charge d'affairs, foreign affairs officers, advisers and attachés while serving abroad, at such rates to be determined by the Secretary of Foreign Affairs:	
Philippine Legation in Buenos Aires, Argentina	₱18,000.00
Philippine Mission in Tokyo, Japan	11,400.00
	₱29,400.00

(3) Additional appropriation for representation expenses of ambassadors, ministers, the Chief of Mission to the United Nations, and principal officers or heads of foreign service establishments, including ranking diplomatic personnel:	
Philippine Legation in Buenos Aires, Argentina	₱16,800.00
Philippine Mission in Tokyo, Japan	15,000.00
	₱31,800.00
(4) For reimbursement of expenses of Consuls Ad Honorem, including operation and maintenance of their offices	₱5,000.00
Total for special expenses	₱101,600.00

SUMMARY

Total for salaries and wages	₱173,270.00
Total for sundry expenses	112,000.00
Total for furniture and equipment	25,000.00
Total for special expenses	101,600.00
Total	₱411,870.00

9. Item D–IV–9, Republic Act No. 320, as continued in force by Republic Act No. 424, is amended to read as follows:

"9. For the purchase or construction of buildings to house embassies, legations, consulates or other representations of the Republic of the Philippines in foreign countries, including acquisition of land, lease-hold rights, and cost of repairs, maintenance and alterations of buildings leased to or owned by the Government, as may be determined by the Secretary of Foreign Affairs: PROVIDED, HOWEVER, That no part of this amount shall be transferred to any other item ₱1,000,000.00"

Total for the Department of Foreign Affairs	**₱420,870.00**

E.—DEPARTMENT OF THE INTERIOR

IV.—SPECIAL PURPOSES

3. For salaries and other expenses of guerrillas and civilian volunteers who have been reactivated or absorbed into the regular force of the Philippine Constabulary in connection with the campaign for peace and order, for the period from August 16, 1949 to June 30, 1950 ..... ₱5,628,861.55

Total for the Department of the Interior ..... ₱5,628,861.55

F.—DEPARTMENT OF FINANCE

I.—SALARIES AND WAGES

(2) BUREAU OF CUSTOMS

383*a*. Additional appropriation to provide each of the twenty-five laborers paid from items F–I(2)–239, 265, 295, 310, 331, 341 and 383, Republic Act No. 320, with a minimum salary rate of ₱1,140 per annum ..... ₱15,690.00

II.—SUNDRY EXPENSES

5. For additional appropriation for rental of buildings and grounds 78,000.00

III.—FURNITURE AND EQUIPMENT

2. For the purchase of one customs launch for the Port of Cebu to replace the one destroyed by typhoon on November 11, 1949 .. 50,000.00

IV.—SPECIAL PURPOSES

1. Additional appropriation "for expenses in connection with secret service" 23,340.00

10. Additional appropriation for expenses in connection with the registration of the claims of all officers and employees of the Government of the Commonwealth of the Philippines, etc., Republic Act No. 304 ..... 50,000.00

12. For additional personnel engaged in the collection of customs revenue 75,000.00

13. For training of additional personnel engaged in the collection of internal revenue taxes 100,000.00

Total for the Department of Finance ..... ₱392,030.00

G.—DEPARTMENT OF JUSTICE

II.—SUNDRY EXPENSES

1. Additional appropriation for traveling expenses of personnel ..... ₱11,900.00

5. Additional appropriation for rental of buildings and grounds	50,000.00
6*a*. Additional appropriation for consumption of supplies and materials to be allotted to the Bureau of Prisons for the maintenance of prisoners	470,000.00
IV.—SPECIAL PURPOSES	
13*a*. For salaries of pre-war justices of the peace	900,000.00
13*b*. For additional personnel for the General Land Registration Office	20,000.00
Total for the Department of Justice	₱1,451,900.00

I.—DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS

II.—SUNDRY EXPENSES	
1. Additional appropriation for traveling expenses of personnel	₱95,000.00
2. Additional appropriation for freight, express and delivery service	245,000.00
6. Additional appropriation for consumption of supplies and materials	220,000.00
7. Additional appropriation for printing and binding reports, documents and publications, including purchase of stamped envelopes and cost of plates and printing of stamps with new designs	13,000.00
9. Additional appropriation for maintenance and repair of equipment	8,000.00
10. Additional appropriation for other services	33,000.00
IV.—SPECIAL PURPOSES	
11*a*. For the operation of post offices in newly created chartered cities and municipalities; for the employment of additional personnel, purchase of supplies and equipment, and other expenses needed to cope with the increased volume of postal business in the City of Manila and provincial post offices; and for adjustment of salaries of present personnel to place them on equal footing with those of positions of similar importance and responsibility in other bureaus and offices: PROVIDED, That adjustment of salaries shall be limited to employees receiving not more than ₱3,960 per annum	1,500,000.00
11*b*. For the assignment and fixing of compensation of inspectors of the Bureau of	

Posts, and for other purposes, in accordance with the provisions of Republic Act No. 410	145,320.00
11*c*. For an appropriation to raise the additional compensation below ₱360 per annum of municipal treasurers and other government employees acting as postmasters to said rate	91,068.00
11*d*. For the standardization and adjustment of the salaries of telegraph operators and other non-clerical positions in the Bureau of Telecommunications performing the duties of telegraph operators	298,325.00
11*e*. For the installation, operation and maintenance of the Government Telephone System, interconnecting all government offices in the City of Manila and suburbs	180,000.00
To be paid out of the receipts of the Government Telephone System, any provision of law to the contrary notwithstanding	(180,000.00)
Total for the Department of Public Works and Communications	₱2,648,713.00

J.—DEPARTMENT OF EDUCATION

III.—FURNITURE AND EQUIPMENT

2. For the purchase of manuscripts	₱7,875.00

IV.—SPECIAL PURPOSES

1*a*. For the operation and maintenance of 10,500 additional new elementary classes	20,903,200.00
4. Aid to defray the expenses of the Lagangilang National Agricultural High School	42,000.00
17*a*. For the operation and maintenance of the Aborlan Agricultural High School	20,000.00
Total for the Department of Education	₱20,973,075.00

L.—DEPARTMENT OF NATIONAL DEFENSE

IV.—SPECIAL PURPOSES

15. Additional appropriation to carry into effect the purposes of Republic Act No. 65, providing for a Bill of Rights for officers and enlisted men of the Philippine Army and of recognized or deserving guerrilla organizations, etc.: PROVIDED, That no part of this amount shall be used for the creation of new positions and increases of salaries of personnel	₱9,500,000.00

ARMED FORCES OF THE PHILIPPINES

(c) PHILIPPINE NAVAL PATROL

SPECIAL EXPENSES

1. Additional appropriation for maintenance and operation due to the expansion of activities of the Philippine Naval Patrol.....	2,500,000.00
Total for the Department of National Defense	₱12,000,000.00

M.—DEPARTMENT OF HEALTH

II.—SUNDRY EXPENSES

1. Additional appropriation for traveling expenses of personnel	₱51,600.00
6. Additional appropriation for consumption of supplies and materials, including the necessary amount for the purchase of tiki-tiki, vaccines, sera, anti-toxins and other biological products and subsistence of lepers in institutions under the Bureau of Hospitals	1,000,000.00

IV.—SPECIAL PURPOSES

8*a*. For one-half share in the office expenses of the city health officer, Basilan City, including prior year's expenses, pursuant to the provisions of Republic Act No. 288.....	8,000.00
Total for the Department of Health	₱1,059,600.00

N.—DEPARTMENT OF COMMERCE AND INDUSTRY

II.—SUNDRY EXPENSES

5. Additional appropriation for rental of buildings and grounds	₱89,730.00

IV.—SPECIAL PURPOSES

4. Additional appropriation for the operation and maintenance of the Weather Bureau stations paid for by the United States Government which were completely taken over by the Government of the Republic of the Philippines on July 1, 1949	109,125.00
Total for the Department of Commerce and Industry	₱198,855.00

O.—GENERAL AUDITING OFFICE

II.—SUNDRY EXPENSES

5. Additional appropriation for rental of buildings and grounds	₱31,830.00
Total for the General Auditing Office	₱31,830.00

R.—SUPREME COURT OF THE PHILIPPINES

VI.—SPECIAL PROVISIONS

2. Any provision of existing law to the contrary notwithstanding, the Chief Justice of the Philippines is hereby authorized within the limits of the income derived from fees in the bar examinations and admission to the practice of Law, to cover, out of said receipts, the fees for the examiners fixed at ₱2 per notebook corrected.

S.—COURT OF APPEALS

I.—SALARIES AND WAGES

6. For the difference in salary of the Clerk of Court from ₱6,000 to ₱7,200 per annum as provided in section 36 of the Judiciary Act of 1948 (Republic Act No. 296)	₱1,200.00

II.—SUNDRY EXPENSES

5. Additional appropriation for rental of buildings and grounds, including the unpaid rentals amounting to ₱21,500 for the period from March 1, 1947 to June 30, 1948	44,800.00
Total for the Court of Appeals	₱46,000.00

T.—CONTINGENT FUNDS

3. For covering deficits that may arise due to the items of "savings to be made" provided in the appropriations authorized under paragraph A, section 1, of Republic Act No. 424, which the President may authorize	₱4,000,000.00
Total for the Contingent Funds	₱4,000,000.00
GRAND TOTAL OF THE APPROPRIATIONS AUTHORIZED IN THIS ACT: FIFTY MILLION SEVEN HUNDRED THIRTY-SIX THOUSAND SIX HUNDRED FIFTY-NINE PESOS AND TWENTY-THREE CENTAVOS	₱50,736,659.23

SEC. 2. The special and general provisions of Republic Act Numbered Three hundred twenty are hereby made applicable to the appropriations provided in this Act.

SEC. 3. Section 5 of Republic Act Numbered Three hundred twenty as continued in force by Republic Act Numbered Four hundred twenty-four, is amended to read as follows:

"SEC. 5. **Authority to use savings.**—The President of the Philippines is authorized to use any savings in

the appropriations authorized in this Act for the Executive Departments, (1) for the payment of claims under section 699 of the Revised Administrative Code and the Workmen's Compensation Act, whichever is applicable, to officers, employees and laborers who died or were injured in line of duty; (2) for the commutation of the money value of the additional leave, extended leave, and accrued leave earned by American and deceased Filipino officers and employees, or by Filipino officers and employees separated from the service except for cause, for service rendered prior to November twenty-ninth, nineteen hundred and thirty-six; and (3) for the payment of salary increases of officials and employees of the National Government, resulting from the standardization of salaries or reclassification of provinces."

SEC. 4. This Act shall take effect as of July first, nineteen hundred and forty-nine.

Approved, April 28, 1950.

H. No. 900

[REPUBLIC ACT NO. 426]

AN ACT TO REGULATE IMPORTS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. As used in this Act:

(*a*) Definitions:

(1) "Import quota" refers to the total value of any item of import allowed for entry into the Philippines for any specified period.

(2) "Quota allocation" refers to the total value of imports of any particular item allowed to an importer, or that portion of the import quota granted to the importer.

(3) "Import license" refers to the permit issued by the Import Control Board to import any particular shipment of commodities.

(4) "Foreign exchange" refers to any medium for effecting international payments.

(5) "Old importer" refers to any person, whether natural or juridical, who imported a particular commodity in the years nineteen hundred forty-six, nineteen hundred forty-seven and/or nineteen hundred forty-eight.

(6) "New importer" refers to all other importers.

(7) "Board" refers to the Import Control Board.

(8) "Commissioner" refers to the Chief of the Import Control Administration.

(*b*) Appendices A, B, C and D as attached, are hereby made an integral part of this Act.

SEC. 2. There is hereby created an Import Control Board composed of three members who shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and shall hold office for two years, one of whom shall be designated as Chairman by the President. One member shall represent the Central Bank; one, the businessmen; and one, the consumers: *Provided,* That with the exception of the member representing the Central Bank, no other member shall be connected with the Government or any of its agencies, instrumentalities or corporations owned or controlled by it.

The two members of the Board not representing the Central Bank shall each receive a *per diem* compensation at the rate of twenty-five pesos for every meeting attended, but the total of which *per diems* for the whole year shall not exceed six thousand pesos for each member.

SEC. 3. The Import Control Board shall:

(1) Establish the policies governing the fixing and allocation of quotas for any article, goods or commodity, pursuant to the provisions of this Act;

(2) Promulgate such rules and regulations as may be necessary for the proper enforcement and/or implementation of this Act;

(3) Exercise supervision and control over the Import Control Administration, and review, on appeal, any decision, ruling or opinion issued by the Import Control Administration or by its Commissioner; and

(4) Be responsible for carrying out the provisions of this Act and such rules and regulations issued thereunder.

SEC. 4. In order to provide for the proper administrative machinery in carrying out the policies, rulings, orders or opinions of the Import Control Board as well as the provisions of this Act, there is hereby created the Import Control Administration whose chief shall be known as Commissioner and who shall have the following powers:

(1) To grant quota allocations among importers in accordance with the policies established by the Import Control Board and the provisions of this Act;

(2) To receive and act on applications for quota allocations and import licenses and issue the corresponding quota allocations import licenses for applications approved pursuant to the policies laid down by the Import Control Board and the provisions of this Act;

(3) To carry out and implement all policies and resolutions established by the Import Control Board; and

(4) To appoint the personnel of his office subject to the approval of the Import Control Board: *Provided,* That all appointments in the administration shall be subject to the Civil Service Law, rules and regulations.

The Commissioner shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments, and shall hold office for two years. He shall receive a salary of ten thousand pesos *per annum*. He shall not hold any office in any Government entity, agency or corporation, nor shall he have any pecuniary interest in any company or corporation affected by the functions of this office.

a. The Import Control Administration shall have an auditor who shall be appointed by the Auditor General and shall receive a compensation of six thousand pesos *per annum*. He shall audit the accounts of the Import Control Board and the Import Control Administration as well as all quotas of all items of imports and the allocations of the same of all importers in accordance with auditing laws and usual auditing practices.

b. The Import Control Administration shall create a Research and Statistics Division to submit statistical data for the guidance of the Import Control Board for fixing import quotas and granting import allocations.

c. The President of the Philippines shall have direct control and supervision and control over the Board and the Import Control Administration.

SEC. 5. Any person desiring to import any article, goods or commodities into the Philippines shall file an application for a corresponding quota allocation and license with the Import Control Administration. For old importers, the application shall be executed under oath and shall contain, among others, their name, address, nationality, stock on hand of the goods applied, the amount of their importation in the years nineteen forty-six, nineteen forty-seven and nineteen forty-eight of the articles, goods or commodities applied for; and if a new importer, his application shall contain a statement of his actual financial resources to finance the importation of the goods applied for.

SEC. 6. No person, corporation or association shall import any article, goods or commodity into the Philippines without a proper import license issued for said purpose in accordance with this Act. Any importation or order to import any articles, goods or commodities under control under the old Import Control Law between April thirty, nineteen fifty and the date of the approval of this Act shall be considered illegal unless such order or importation was duly approved by the Import Control Board.

SEC. 7. Import quotas shall be fixed by the Import Control Board in accordance with the following schedule of percentages:

(1) Prime imports which shall consist of articles, goods and commodities of prime and/or first necessity and not sufficiently available locally like those enumerated in Appendix "A" hereto attached, shall be reduced by not more than forty *per centum*.

Consistent with the policy of conserving international monetary reserves and until domestic production warrants reduction of importation, entry of these commodities shall be allowed as much as possible.

(2) Essential imports consisting of articles, goods and commodities which, though not of prime and/or first necessity, are necessary for the health and material well-being of the people like those enumerated in Appendix "B", shall be reduced by not less than forty *per centum* nor more than sixty *per centum*.

Importation of these commodities shall be gradually reduced with the end in view of encouraging their domestic production.

(3) Non-essential imports consisting of articles, goods and commodities which, though not necessary for the health and material well-being of the people, but whose consumption is concomitant with the rise of their standard of living, like those enumerated in Appendix "C", shall be reduced by not less than sixty *per centum* nor more than eighty *per centum*.

Importation of these commodities shall be reduced as much as possible to stimulate domestic production or manufacture thereof in sufficient quantities with the end in view of ultimately supplying the local demand for such commodities.

(4) Luxury imports consisting of articles, goods, and commodities intended primarily for ostentation or pleasure, like those enumerated in Appendix "D", shall be reduced by not less than eighty *per centum* nor more than ninety *per centum*.

To foster the habit of thrift among the people and to conserve further our dollar reserve, importation of these commodities shall be discouraged completely.

Upon the joint certification by the Secretary of Agriculture and Natural Resources and the Secretary of Commerce and Industry that the domestic supply of certain articles, goods or commodities heretofore imported is sufficient to meet the local demand, the Board shall impose the maximum percentage reduction on the import quotas for such articles, goods or commodities, as provided for in this Act. Upon the certification by the Secretary of Agriculture and Natural Resources and the Secretary of Commerce and Industry that an article or commodity not under control has a sufficient local supply to meet adequately the local demand, and the Board upon investigation, is convinced of the necessity of controlling such items to protect local industry or industries, the Import Control Board, may, place in the control list the said article or commodity.

The Import Control Board is hereby authorized to transfer a controlled import item from a lower class to a higher class of import should the Board be convinced

that the local supply of said commodity warrants said transfer.

SEC. 8. The following imports shall be admitted without import quota allocation:

(1) Raw materials imported to be used in the manufacture of commodities constituting prime and/or first necessity imports, as defined in this Act, as well as raw materials which in themselves constitute prime and/or first necessity imports and essential imports, when used in local or in the manufacture of dollar-saving and dollar-producing commodities, if such raw materials are not sufficiently available in the Philippines.

(2) Articles, goods and commodities intended solely for the personal use of the person importing provided no foreign exchange is used.

(3) Supplies and equipment intended solely for the use of the Armed Forces of the Philippines and of the United States of America, Philippine Government and semi-government hospitals, and of the Philippine National Red Cross, books, supplies and equipment for schools and those for the use of the community chest and other duly registered charitable organizations and charitable missionary establishments.

(4) Articles, goods and commodities imported in exchange or bartered with Philippine products, except luxury imports as defined in this Act and controlled non-essential imports produced or manufactured locally in sufficient quantities to meet the demand of the public: *Provided,* That the Import Control Board shall determine what Philippine exports shall not be permissible for barter purposes under the provisions of this Act.

(5) Goods intended solely for use in religious rites and ceremonies.

(6) Goods imported pursuant to the provisions of any Price Control Law or regulation.

(7) Goods intended solely for rent, lease or exhibition: *Provided,* That at least twenty-five *per centum* of the gross rentals, royalties and earnings paid therefor shall not be allowed for remittance abroad.

SEC. 9. No item of import not enumerated in the appendices of this Act shall be allowed an import license and exchange cover in excess of its import value (C. I. F.) for the year nineteen hundred forty-eight except agricultural machineries and equipment and other machinery, materials and equipment for dollar-producing and dollar-saving industries.

SEC. 10. For the purpose of fixing the import quota for each article, goods, or commodity, the average annual C. I. F. value thereof for the year nineteen hundred forty-six, nineteen hundred forty-seven and nineteen hundred forty-eight shall be used as basis.

SEC. 11. Within thirty days after the Import Control Board as herein provided shall have fixed the import quota for each item of import, any importer desiring to import any such item may file an application with the Commissioner for an allocation of a portion of said import quota. Any ruling or resolution of the Import Control Board as provided in Republic Act Numbered Three hundred thirty to the contrary notwithstanding, the applicants may file their application within forty-five days after the approval of this Act.

SEC. 12. The portion of the import quotas available for old importers shall be allocated by the Commissioner among them in proportion to the annual average amount of their importation of the articles and on the evidence of the sales tax actually paid by them corresponding to the years nineteen hundred forty-six, nineteen hundred forty-seven and nineteen hundred forty-eight. The importers' tax receipts corresponding to any particular article, goods or commodity being certification under oath and other documentary evidence shall be used as the principal basis for determining the value of the previous imports of such importers: *Provided,* That no importer shall be allowed more than thirty *per centum* of the total import quota for any item except when such limitation may, in the opinion of the Import Control Board, be detrimental to public interest. Allocation for importers who imported during a fraction only of the year nineteen hundred forty-six, nineteen hundred forty-seven and/or nineteen hundred forty-eight shall be computed on the basis of the ratio which said fraction of the year bears to the whole year.

SEC. 13. In determining the allocation of import quota among old and new importers, all Government agencies importing any particular article, goods or commodity shall be included and considered as private importers and in such cases the value of their respective imports may be based on documentary evidence other than tax receipts.

SEC. 14. The Board shall reserve thirty *per centum* of the total import quota for any articles, goods or commodities for the fiscal year nineteen hundred fifty and nineteen hundred fifty-one, forty *per centum* for the fiscal year nineteen hundred fifty-one and nineteen hundred fifty-two, and fifty *per centum* for the fiscal year nineteen hundred fifty-two and nineteen hundred fifty-three in favor of *bona fide* new importers who did not import such items at any time during the years nineteen hundred forty-six, nineteen hundred forty-seven and nineteen hundred forty-eight. To qualify as new importer, one must be a Filipino citizen or a juridical entity at least sixty *per centum* of whose stock is owned by Filipino citizens. After the total number of new importers has been determined, the portion of the import quota herein re-

served shall be allocated proportionately among them on the basis of financial capacity and business standing of the applicant: *Provided,* That said applicant has been duly licensed to engage in a business and industry and has an established place of business or cooperative association organized under Commonwealth Act Numbered Five hundred sixty-five known as the National Cooperative Act. Should there be no such new applicants or should the said reserved portion be not entirely covered by new applicants, the said reserved portion of the import quota or any balance thereof shall be allocated among the rest of the importers: *Provided, further,* That nothing contained in this section shall in any way impair or abridge the rights granted to citizens and juridical entities of the United States of America under the Executive Agreement signed on July fourth, nineteen hundred forty-six, between that country and the Republic of the Philippines.

SEC. 15. Any existing law, executive order or regulation to the contrary notwithstanding, no Government, office, agency, or instrumentality, except the Import Control Commissioner, shall allocate the import quota among the various importers: *Provided,* That the Philippine Rehabilitation and Trade Relief Administration shall have exclusive power and authority to determine and regulate the allocation of wheat flour, among importers.

Quota allocations of any importer for any particular article, including wheat flour, shall not be transferable.

It shall be illegal to cede, transfer, sell, rent, lease or donate, his or its import quota allocation or license, either directly or indirectly or by the use of any simulation, strategy or scheme, to persons or entities not entitled to import quota under the provisions of this Act, and any violation thereof shall be punishable with the forfeiture by the Commissioner of the import quota or license of the erring party without prejudice to his subjection to the penal provisions of this Act.

SEC. 16. If the Commissioner, after a thorough investigation is satisfied that an application for quota allocation or license is in order and that the applicant has complied with all the requirements provided in this Act and the rules and regulations issued thereunder, he shall approve it and issue the corresponding import license: *Provided, however,* That no application shall remain pending in the office of the Import Control Administration for a period longer than sixty days, otherwise, the Commissioner shall be made to account to the Import Control Board for the delay, and failure to give satisfactory explanation shall be ground for dismissal or any other appropriate administrative action. Applications for quota allocations shall be numbered correlatively, based on the chronological order of their filing showing the date and hour each application was filed. No application shall be

acted upon unless action has been taken upon other applications previously filed thereto. Applications for quota allocations shall be stamped with the date and hour when it was filed and a corresponding receipt shall be issued to the applicant thereof showing the number of the application, the date and hour of filing, pursuant to the provisions of this section: *Provided, moreover,* That all import quota allocations and licenses pending at the time of the approval of this Act shall be considered new applications in the light of the provisions of this section.

SEC. 17. The Monetary Board of the Central Bank shall certify to the Import Control Board from time to time the amount of exchange available for any specified period for import purposes. The Commissioner shall not issue any import license when the value involved in such importation exceeds the balance of the total foreign exchange available for that period as certified to by the Central Bank.

SEC. 18. Upon presentation of an import license duly issued by the Commissioner, the Central Bank shall issue to the holder thereof the corresponding exchange cover.

SEC. 19. When the foreign exchange available cannot cover all the applications for importation, the Import Control Board shall reduce proportionately the foreign exchange available among the import license holders.

SEC. 20. Any violation of the provisions of this Act or any rules and regulations issued thereunder shall be punished by a fine of not less than five thousand pesos nor more than fifty thousand pesos, or by imprisonment for not less than two years nor more than five years, or by both, such fine and imprisonment at the discretion of the Court: *Provided,* That in the case of aliens, the penalty shall consist of payment of fine and immediate deportation without the necessity of any further proceedings on the part of the Deportation Board: *Provided, further,* That if the violation is committed by the manager, representative, director, agent or employee of any natural or juridical person in the interest of the latter such violation shall render said natural or juridical person amenable to the penalties corresponding to the offense, without prejudice to the imposition of the proper penalty, either personal or pecuniary, or both, upon the manager, representative, director, agent, or employee: *Provided, further,* That any officer or employee of the Import Control Board and Import Control Administration violating any provision of this Act or rules and regulations issued in pursuance of this law shall be summarily dismissed without prejudice to the filing of criminal action against him: *Provided, further,* That juridical persons shall be amenable only to the fine penalty: *Provided, further,* That in case of any violation committed in the interest of a foreign juridical person duly licensed to engage in business in the Philippines by its manager, representative, director or agent,

such violation shall be sufficient cause for the immediate revocation of such license: *And provided, lastly,* That articles, goods or commodities imported in violation of this Act shall be subject to forfeiture in accordance with the procedure established in article eighteen, Chapter thirty-nine of the Revised Administrative Code, and under no circumstances or conditions may the goods be released to the importer thereof: *Provided, finally,* That any official or employee of the three aforementioned agencies who shall be found guilty of violating articles two hundred ten and two hundred eleven of the Revised Penal Code on bribery, shall suffer not only the penalties provided for in those two articles but also the penalties provided for under this section, and shall further suffer perpetual disqualification from holding public office.

Any importer who orders to import or imports any article, goods or commodity without first securing an import license therefor in accordance with the provisions of this Act, shall be disqualified to do business in the Philippines and his license shall be withdrawn by the Collector of Internal Revenue.

No member of the Import Control Board nor any officer of the Central Bank or the Import Control Administration shall directly or indirectly be financially interested in any importation business, nor shall he engage himself in the importation of goods subject to the restrictions provided for in this Act.

Any official or employee of the Import Control Board, or the Import Control Administration, or the Central Bank who aids any person or entity in the violation or circumvention of any of the provisions of this Act or of any rules or regulations issued thereunder shall, upon conviction, be subject to the same penalty hereinabove provided and be disqualified perpetually from holding any public office.

SEC. 21. The sum of seven hundred fifty thousand pesos annually, or so much thereof as may be necessary to carry out the purposes of this Act, and until Congress provides otherwise, is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, to defray the expenses of the Import Control Board and the Import Control Administration.

SEC. 22. Any act or executive order, rules or regulations whose provisions are contrary to or in contravention with any provisions of this Act are hereby repealed. Any section or provision of this Act that may be declared unconstitutional by a competent court, shall not affect the remaining provisions thereof.

SEC. 23. The Import Control Board shall, as soon as possible and in no case exceeding sixty days, fix all the import quotas of all items of imports as provided for in this Act; meantime, all the existing quotas and allocations as well as rules and regulations on import control shall con-

tinue until revised or repealed, and the Members of the Import Control Board and the Import Control Commissioner shall remain in office until the President has appointed their successors.

SEC. 24. This Act shall take effect upon its approval.

Approved, May 19, 1950.

APPENDIX "A"

(*Controlled Prime Imports*)

Corned beef

Meat, fresh, chilled or frozen:
- Beef and veal
- Chicken and guineas
- Ducks and geese
- Other poultry and games
- Liver, kidney, hearts, tongues, tripes, etc.
- Mutton and lamb
- Pork
- Turkey
- Other meats

Household remedies:
- Any drug, mixture of drugs, galenic or officinal preparation of common or ordinary use, sold without medical prescription in original packages, bottles or containers, the nomenclature whereof is determined by the Board.

Proprietary medicine:
- Any drug, preparation or mixture of drugs marketed under a trade name and intended for the cure, mitigation or prevention of disease in man or animals.

Oats, rolled

Oatmeal

Talcum powder, unperfumed

Spices:
- Cinnamon
- Mustard
- Nutmeg
- Pepper (Paprika)
- Pimentoes
- Saffron
- All other spices

Rubber boots and rubber shoes

Tiki-tiki

Used clothing

Incandescent lamps

Jute and other fibers:
- Bags
- Burlaps and baggings
- Cordage
- Oakum
- Threads and twines
- Others

APPENDIX "B"

(*Controlled Essential Imports*)

Bottles, vials, jars, etc.

Butter

Cheese

Clay dishes and other tableware and earthern stonewares
Cacao:
    Beans—
        Manufactured, powdered, sweetened or unsweetened
Coffee:
    Raw or green
    Ground or as candy
Cotton textiles at prices not exceeding ₱1 per meter
Cotton knitted underwear for men at not more than ₱1 a piece
Cotton underwear for women at not more than ₱2 a piece
Silk textiles at prices not exceeding ₱2.50 per meter
Rayon textiles at prices not exceeding ₱1.50 per meter
Other textiles at prices not exceeding ₱2 per meter
Remnants and rummage of cotton flax, linen, nylon, wool, silk or rayon
Bread
Dentrifices
Electrical batteries, storage or wet
Extracts, flavors and syrups
Fish nets
Fresh fruits:
    Apples and grapes
    Oranges
    Litchi
    Lemons
Fountain pens below ₱5
Nails, common wire and finishing from size 1" to 5", inclusive
Hams and shoulders
Onions, fresh
Pencils, mechanical below ₱5
Radios, below ₱100
Radio phonographs below ₱300
Refrigerator
Tea
Thermos and vacuum bottles
Commercial or industrial explosives
Sulphuric acid
Paints
Coke
Cotton and rayon yarns

APPENDIX "C"

(*Controlled Non-essential Imports*)

Bicycles
Bakery products:
    Biscuits
    Cakes
    Pudding
Breakfast foods and preparations except oats and infant foods
Corn, canned or popped
Cotton manufactures:
    Cloths
    Fabrics except umbrella fabrics
    Khaki fabrics
Ready-made wearing apparel outer or inner
Eggs in shell, fresh or salted
Fish and fish products:
    Fresh—
        Haddock and halibut
        Other fresh fish
        Shell fish

Canned goods—
- Abalone
- Anchovies
- Crabs and crabmeats
- Cuttlefish (squid)
- Clams
- Herring
- Mackerel
- Oysters
- Roe
- Shrimps
- Tuna and bonito
- Sauces fish
- Canned shellfish
- All other canned fish

Dried, smoked, salted or cured, except:

Salmon and sardines—
- Anchovies
- Bechedemer (trepang)
- Codfish
- Cuttlefish (squid)
- Haddock
- Herring
- Sharksfin
- Shrimps
- Other shell fish
- Other dried fish

Electric fans and irons

Electric stoves and ranges

Flourescent lamps:

14–Watt	T12
15–Watt	T12
15–Watt	T 8
20–Watt	T12
30–Watt	T 8
40–Watt	T12

Flour, all kinds, except wheat flour

Fruits and preparations:

Canned—
- Apples
- Appricots
- Cherries
- Fruit salad (mixed fruits)
- Grapes
- Lemon
- Litchi
- Oranges
- Peaches
- Pears
- Pineapples
- Plums
- Pomelos and grapefruit
- Prunes
- Strawberries
- Other berries
- All other canned fruits

Dried and otherwise preserved—
- Dates
- Figs
- Prunes

Raisins
Other dried fruits

Miscellaneous fruit preparations—
Jams, jellies and marmalades
Paste fruits
Pickled
Olives

Sauces, fruit

Garlic
Ginger
Glass tableware
Gelatin
Ice cream freezers and hardeners
Jeeps and station wagons
Matches

Meat products:

Canned meat, except corned beef—
Bacon
Beef except corned beef
Devilled meat—
Ham
Meat paste and spread
Pork
Soups, consomme and chowder
Poultry and game
Sausages
Other canned meat

Dried, smoked, cured or pickled except hams and shoulders
Bacon
Beef
Poultry and game
Sausages
Other dried, smoked, cured or pickled meat

Musical instruments, brass band or orchestra
Macaroni, spaghetti, vermicelli, noodles
Organs and harmoniums below ₱1,200
Paper and paper manufactures:

Writing board and tablet paper
Albums
Post cards
Kraft paper, paper bags, Manila paper and other wrapping papers

Paper clips
Phonograph records except master records
Pianos and pianolas below ₱1,200
Potatoes, Irish
Prepared bread, cake or pastry mixes
Ramie, flax, linen, and rayon fabrics, knitted or otherwise
Shoes and boots
Silk manufactures except yarns and threads
Starches (corn, tapioca and potato) except industrial starch
Tobacco and manufactures:

Cigarettes
Cigars
Snuff and chewing tobacco
Prepared tobacco (smoking)
Other manufactured tobacco
Leaf tobacco
Stems and scrap tobacco

Table and kitchen utensils, enamelled or cast iron
Tablewares except table cutlery
Textile and manufactures of flax and linen
Other enamelled wares
Watches and clocks below ₱10
Water coolers
Floor wax
Wool or cotton wastes

APPENDIX "D"

(*Controlled Luxury Imports*)

Air conditioning equipment
Alcohol, denatured
Asbestos shingles, roofing, sideboards, tiles and pipes
Animals except for working, breeding or dairy purposes
Animal fat, and oil, edible:
- Lard compound and substitutes
- Oleomargarine
- All others

Animal products, inedible:
- Leather manufactures
- Bags, traveling
- Belts
- Horns, ivory and boxes
- Sandals and slippers with canvass tops
- Garments
- Harness and saddles
- Pocket books, purses, wallets and handbags
- Welting leather
- Other leather manufactures

Other inedible animal products:
- Feather downs
- Shell manufactures

Ashtrays of whatever kind or material
Asphalt tiles
Automobiles, and passenger cars except unassembled, spare parts and accessories
Beauty parlor equipment
Beads and other decorative articles
Bird cages
Bird nests
Bus bodies
Blackboard chalks
Cameras and accessories except 3⅛ by 4¼ cameras or larger and professional accessories
Candles
Cement (Portland) and manufactures
Chewing gum
Celluloid and manufactures:
- Belts
- Frames and mountings, eyeglass
- Sheets and stripes
- Other, except buttons

Chandeliers with outlets exceeding one light
Cloth rompers
Coat hangers
Combs
Commercial hydrochloric acid

Electric egg beater, mixer, fruit squeezers, floor and table lamps
Face powder including perfumed talc
Electric beaters
Fresh fruits:
- Cherries
- Peaches
- Pears
- Plums
- Pomelos and grapefruits
- Strawberries
- Other berries
- All other fresh fruits

Sporting explosives, fireworks, firearms and ammunition
Furs and manufactures
Gold, platinum and silver
Hats
Ice cream, ice cream powder mix and preparations with sugar added
Jardinieres, flower pots and other decorative objects
Jewelries, precious metals and stones
Juke boxes
Liquors, wines and beverages including beer and cider:
- Distilled spirits
- Alcohol, ethyl
- Brandy
- Cordials
- Gin
- Rum
- Others (blackberry, ginger, etc.)
- Whiskey—
  - Corn (Bourbon)
  - Malt (Scotch)
  - Rye
  - All other whiskeys
- Wines—
  - Sparkling
- Other wines
- Ginger ale and non-alcoholic beverages

Lighters for cigarettes and cigars
Linoleum
Ladies hand fans
Lamp shades
Manicure instruments
Manufactures of horn, ivory and bone
Mattresses of all kinds
Mechanical pencils, fountain pens and desk writing sets above ₱5
Metal chairs, desks and furniture for home, for office, except medical, dental and hospital equipment
Milk in any form with sugar added except condensed and those for infant feeding
Motorboats and cutboard motors, except those for commercial purposes
Motion picture projectors and their accessories
Non-motorized carriages, go-carts, velocipedes, and other children's vehicles
Nylon, silk, wool synthetic fabrics and manufactures except yarns and threads
Nuts and preparations:
- Almonds
- Chestnuts
- Peanuts
- Walnuts
- Others

Organs and harmoniums above ₱1,200
Ornamental articles of any materials
Phonographs
Plastic products
Perfumes, toilet soaps and other toilet preparations:
- Face powder, including perfumed talc
- Cream and balms
- Lotion
- Pomade and brillantine
- Rouge and lipstick
- Shaving creams, cakes and sticks
- Other toilet preparations

Plate, glass
Plateware, gold or silver
Playing cards
Radio above ₱100
Radio phonographs above ₱300
Sporting goods:
- Fishing rods and tackles
- Air rifles
- Bowling alleys, billiard pool and other similar tables and equipment
- Tennis rackets
- Guts for tennis rackets
- All other sporting goods

Rubber and manufactures:
- Balloons
- Belts
- Combs
- Garments
- Sheets, crude
- Soles, inner
- Soles, outer
- Shoes, rubber with canvass tops

Ropes and twines
Sailing vessels, except those for commercial purposes
Salt, crude
Silk screen posters for advertising purposes
Shells and manufactures
Straws, rushes, palm leaf and manufactures
Sugar, molasses, syrups, sweets and candies
Toys of any material, games and amusements
Vacuum cleaners
Vegetables and preparations:
- Oils and fats
- Salad dressings, mayonnaise
- Fresh vegetables—
  - Asparagus
  - Beets
  - Cabbages
  - Carrots
  - Cauliflowers
  - Celery
  - Lettuce
  - Others
- Canned—
  - Asparagus
  - Bamboo sprouts
  - Beets
  - Cabbages
  - Carrots
  - Cauliflowers

Corn
Mushrooms
Peas, chick (garbanzos)
Peas, sweet
Pimentoes
Tomatoes
All others
Dried and otherwise preserved
Tomato and other vegetable juices
Soybean paste (miso)
Pickled vegetables
Sauces
Soup, vegetable
Soybean powder
Vegetable paste and mixtures of meat
Vinegar
Watches, and clocks above ₱10 except time recording devices
Wood, bamboo, rattan, reeds and manufactures
Wall paper
Wall and floor tiles except white glazed tiles
Waste baskets

S. No. 49

[REPUBLIC ACT NO. 427]

AN ACT PROHIBITING AND PUNISHING THE POSSESSION AND EXPORTATION OF SILVER AND/OR NICKEL COINS UNDER CERTAIN CIRCUMSTANCES AND PROVIDING THE PROCEDURE FOR PROSECUTION THEREOF.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It shall be the duty of every person, partnership, association or corporation, having in its possession silver and/or nickel coins of the Philippine currency in an aggregate amount of more than fifty pesos, to turn over any excess over said amount to any bank, treasury or post office in the Philippines in exchange for notes of legal circulation, within seven days from the passage of this Act. At the end of the seven days, as hereinabove provided, every person conducting business, partnership, association or corporation and every seven days thereafter shall record in a cash book or memorandum an inventory of the total amount of coins by denominations that it has in its possession, and this record and all cash and cash receptacles kept by such person, partnership, association or corporation shall be open to inspection and verification by the Secretary of Finance or his duly authorized representatives.

SEC. 2. After the period of seven days provided in the preceding section, it shall be unlawful for any person, partnership, association or corporation to hold, possess or keep silver and/or nickel coins in an aggregate amount exceeding fifty pesos. The possession of such an excess

amount shall be punishable with a fine of five thousand pesos and imprisonment of one year, and the confiscation of the amount held in excess of fifty pesos: *Provided,* That if the person found guilty of violation of this section be a foreigner, the sentence shall also include an order for his deportation immediately after service of his term of imprisonment, principal as well as subsidiary.

SEC. 3. The same penalty provided in the preceding section shall be imposed upon any person who shall take or attempt to take any such coins in excess of five pesos from the territorial jurisdiction of the Philippines to any other place.

SEC. 4. Prosecution under this Act shall take precedence over all kinds of cases in the courts, except *habeas corpus,* and they shall be tried and disposed of without unnecessary delay.

SEC. 5. In cases of corporations, partnerships or associations, the manager and/or the cashier of the establishment shall be held responsible for any violation of the provisions of this Act.

SEC. 6. The provisions of this Act regarding unlawful possession of coins shall not apply to banks, banking institutions, fiscal officers of the Government, building and loan associations, and public utilities and theaters, nor to any enterprises on or the day preceding pay day when they may keep or possess such quantity of coins as may be necessary for the payment of the exact wages or salaries of their employees or laborers on said pay day.

SEC. 7. This Act shall take effect upon its approval.

Approved, May 22, 1950.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

DEPARTMENT ORDER NO. 179

May 3, 1950

CORRECTION OF DEPARTMENT ORDER NO. 170, DATED MARCH 10, 1950, ON CLASSIFICATION OF THE MUNICIPALITY OF ALICIA, BOHOL.

Department Order No. 170, dated March 10, 1950, publishing the classification of the municipality of Alicia, Bohol, is hereby amended, by striking out the words "Executive Order No. 264" appearing therein, and inserting in their place, the words, "Executive Order No. 265."

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 180

May 6, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF OPON, CEBU

For the information and guidance of all concerned, publication is hereby made that, under date of April 26, 1950, the municipality of Opon, Cebu, has been classified by His Excellency, the President of the Philippines as first class, effective May 1, 1950, subject to the condition that said municipality shall pay the full amount of the increase in the salary of the justice of the peace thereof resulting from such change in classification until the portion thereof payable by the National Government shall have been duly authorized in the General Appropriation Act.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 181

May 22, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF BUENAVISTA, AGUSAN

For the information and guidance of all concerned, publication is hereby made that, under date of May 11, 1950, the municipality of Buenavista, Agusan, has been classified by His Excellency, the President of the Philippines, as third class, effective June 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 182

May 23, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF NAUJAN, MINDORO

For the information and guidance of all concerned, publication is hereby made that, under date of May 13, 1950, the municipality of Naujan, Mindoro, has been classified by His Excellency, the President of the Philippines, as first class, effective June 1, 1950, subject to the condition that said municipality shall pay the full amount of the increase in the salary of the justice of the peace thereof resulting from such change in classification until the portion thereof payable by the National Government shall have been duly authorized in the General Appropriation Act.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 183

May 31, 1950

RECLASSIFICATION OF THE PROVINCE OF NUEVA VIZCAYA

For the information and guidance of all concerned, publication is hereby made of the following letter, dated May 29, 1950, of His Excellency, the President of the Philippines, classifying, pursuant to the provisions of Republic Act No. 130, the Province of Nueva Vizcaya as third class, effective July 1, 1950:

"Pursuant to the authority vested in me by Republic Act No. 130, and upon your recommendation, concurred in by the Secretary of Finance, the Province of Nueva Vizcaya is hereby classified as third class effective July 1, 1950, it appearing that its average annual revenue for the last three consecutive fiscal years amounts to more than ₱100,000 which is the minimum required of third class province.

"It is understood, however, that this approval is subject to the condition that the province of Nueva Vizcaya shall pay the full amount of the increases in the salaries of the Provincial Auditor and the District Health Officer resulting from such change in classification until the portions thereof payable by the National Government shall have been duly authorized in the annual General Appropriation Act."

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

May 3, 1950

PROPAGANDA AND RELIEF TEAMS OF THE GOVERNMENT—COOPERATION WITH—

To all Provincial Governors and City Mayors:

For your information and guidance, there are hereunder quoted contents of letter dated April 26, 1950, received in this Department from the Honorable, the Secretary of National Defense:

"The Armed Forces of the Philippines is now engaged in a nation-wide campaign to eradicate dissident elements and outlaws in order to establish permanent peace and security in our country.

"Aside from the huge armed offensive which we are now waging, we have seen fit to embark on a campaign of information in order to neutralize the influence of dissident elements among our provincial folk, and to win back into the folds of our government those who have unfortunately strayed from it. These units of the Armed Forces now operating in the field are in the process of organizing propaganda which will go about preaching to the people the true aims of the government and the reasons why the townpeople will have to undergo some discomfort during the operations. Along with these propaganda units, representatives of the PACSA will distribute relief goods in order to alleviate the sufferings of evacuees. Whenever and wherever possible, entertainers will go with these teams to perform before the troops and the civilian population.

"In this regard, you will agree with me, Mr. Secretary, that for our common efforts to be successful, the fullest cooperation of provincial and municipal officials is necessary. I am therefore requesting that you enjoin these officials through a circular, to extend all possible cooperation and facilities to propaganda and relief teams that may come into their respective localities."

To enable propaganda and relief teams of the Government accomplish their mission thereby helping in the speedy establishment of permanent peace and security in this country, it is desired that all local officials under your jurisdiction be instructed to entend all possible cooperation and facilities to said teams that may be sent by the Government to their respective localities.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR (Unnumbered)

May 8, 1950

APPREHENSION AND PROSECUTION OF EXHIBITORS OF FILMS WITHOUT A PERMIT OR OF FILMS AGAINST PUBLIC MORALS.

To all Provincial Governors City Mayors and Chief of Constabulary:

We have had occasion previously to call the attention of local officials in our Unnumbered Provincial Circular dated August 20, 1947, to the requirement of a permit of the Board of Review for Moving Pictures before motion picture films may be shown in public.

Lately, it has also come to the attention of this Office that films against public morals are being exhibited clandestinely not only in theaters and cinematographs but also in some private houses. It is therefore desired that greater vigilance be exerted to stop the showing of motion pictures without the necessary permit certificates of the Board of Review for Moving Pictures and more so in the case of films which are indecent or immoral.

If the facts so warrant, it is directed that necessary criminal action be instituted against exhibitors of immoral films for violation of article 201 of the Revised Penal Code which is quoted as follows:

"ART. 201. *Immoral doctrines, obscene publications and exhibitions.*—The penalty of *prision correcional* in its minimum period, or a fine ranging from 200 to 2,000 pesos or both shall be imposed upon:

"1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

"2. The authors of obscene literature, published with their knowledge in any form, and the editors publishing such literature;

"3. Those who in theaters, fairs, cinematographs or any other place open to public view, shall exhibit indecent or immoral plays, scenes, acts or shows; and

"4. Those who shall sell, give away or exhibit prints, engravings, sculptures or literature which are offensive to morals.

It is believed this article penalizes practically every offense against public morals, such as public exposition of immoral doctrines, publication of obscene literature, exhibition of immoral plays, and selling or giving away or exhibiting prints, engraving, sculptures or literature offensive to morals.

It is also directed that exhibitors of films without a permit of the Board of Review for Moving Pictures be prosecuted for violation of section 3 of Act 3582, as amended, which is again quoted partly as follows:

"It shall be unlawful for any person or entity to exhibit or cause to be exhibited in

any moving pictures theater or public places, x x x, any film not duly passed by the Philippine Board of Review for Moving Pictures and to print or cause to be printed on any film exhibited in any moving picture theater or public or on any film locally produced a label showing the same to have been officially passed by said Board, knowing that said label has not been previously authorized by the same x x x."

Section 4 of the aforementioned Act provides that "The violation of any of the provisions of section 3 of this Act shall be punished by imprisonment for not than one year, or by a fine of not more than one thousand pesos, or both, in the discretion of the Court."

It is requested that all the local officials under your jurisdiction be advised of the contents hereof for their guidance and compliance.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER NO. 55

May 2, 1950

AMENDING ADMINISTRATIVE ORDER NO. 12, DATED JANUARY 30, 1950, INSOFAR AS THE ASSIGNMENT OF VACATION JUDGES FOR THE CITY OF MANILA IS CONCERNED.

Administrative Order No. 12 of this Department, dated January 30, 1950, is hereby amended insofar as the assignment of Vacation Judges for the City of Manila during the month of May, 1950 is concerned, as follows:

For the City of Manila, District Judges Potenciano Pecson, Higinio Macadaeg, and Judges-at-Large Oscar Castelo, Agustin P. Montesa and Magno S. Gatmaitan.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 56

May 10, 1950

AUTHORIZING CADASTRAL JUDGE MAXIMO ABAÑO TO HOLD COURT IN BALER, QUEZON, IN ADDITION TO PREVIOUS AUTHORITY GRANTED TO HIM.

In addition to the authority granted to Cadastral Judge Maximo Abaño under Administrative Order No. 12 of this Department, dated January 30, 1950, he is hereby authorized to hold court in the municipality of Baler, Province of Quezon, from May 15, 1950, for the purpose of trying all kinds of cases arising from said municipality and the municipalities of Infanta, Burdeos, Gral. Nakar, Casiguran, Maria Aurora and Polilio, same province and to enter final judgment therein.

This cancels Administrative Order No. 47 of this Department, dated April 17, 1950.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 57

May 11, 1950

AUTHORIZING JUDGES-AT-LARGE AND CADASTRAL JUDGES TO HOLD COURT IN DIFFERENT PROVINCES ASSIGNED TO THEM.

In the interest to the administration of justice, the following judges-at-large and cadastral judges are hereby authorized to hold court in the following provinces beginning 1 June 1950, for the purpose of tryinig cases as specified below and to enter final judgments therein:

In the City of Manila, Judges-at-Large Oscar Castelo, Tiburcio Tancinco, Agustin P. Montesa, Alejandro Panlillo and Juan Liwag to try all kinds of cases;

In the Province of Bulacan, Cadastral Judge Manuel Barcelona to try all kinds of cases;

In the Provinces of Albay and Catanduanes, Judge-at-Large Vicente Arguelles to try all kinds of cases;

In the Province of Pangasinan (Lingayen), Judges-at-Large Luis Ortega and Magno S. Gatmaitan to try all kinds of cases; and Cadastral Judge Ladislao Pasicolan (San Carlos) to try cadastral cases only;

In the Province of Rizal, Judge-at-Large Demetrio B. Encarnacion (Pasig) and Gabino S. Abaya (Caloocan) to try all kinds of cases;

In the Province of La Union, Cadastral Judge J. C. Zulueta to try all kinds of cases;

In the Province of Camarines Sur, Judge-at-Large Jose N. Leuterio to try all kinds of cases;

In the Province of Bohol, Judge-at-Large Hipolito Alo to try all kinds of cases;

In the Province of Cavite, Judge-at-Large Jesus Y. Perez to try all kinds of cases;

In Zamboanga City and Province of Sulu, Judge-at-Large Teodoro Camacho to try all kinds of cases; and in the Province of Zamboanga (Dipolog), Cadastral Judge Luis N. de Leon to try all kinds of cases, giving preference to cadastral cases;

In the Province of Cebu, Judge-at-Large Ignacio Debuque to try all kinds of cases;

In the Province of Capiz (Calivo), Cadastral Judge Jose Rodriguez to try all kinds of cases;

In the Province of Davao, Cadastral Judge Cirilo Maceren to try all kinds of cases;

In the Province of Zambales, Cadastral Judge Enrique Maglanoc to try cadastral cases only;

In the Province of Camarines Norte, Cadastral Judge Maximo Abaño to try all kinds of cases;

In the Province of Palawan, Cadastral Judge Lorenzo Garlitos to try all kinds of cases, giving preference to cadastral cases;

In the Provinces of Pampanga and Bataan, Cadastral Judge Francisco Arca to try all kinds of cases;

In the Provinces of Ilocos Sur and Abra, Judge-at-Large Roman Campos to try all kinds of cases;

In the Province of Ilocos Norte, Cadastral Judge Jose Flores to try all kinds of cases, giving preference to cadastral cases;

In the Province of Leyte (Tacloban), Cadastral Judges Juan L. Bocar and J. Querubin to try all kinds of cases;

In the Province of Negros Oriental, Cadastral Judge Roman Ibañez to try all kinds of cases, giving preference to cadastral cases; and

In the Province of Iloilo, Cadastral Judge Luis N. Mejia to try all kinds of cases, giving preference to cadastral cases.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 58

May 12, 1950

AUTHORIZING JUDGE-AT-LARGE DEMETRIO ENCARNACION, IN ADDITION TO AUTHORITY GRANTED HIM, TO HEAR AND PASS UPON A CERTAIN CASE IN RIZAL CITY.

In addition to the authority granted Judge-at-Large Demetrio Encarnacion under Administrative Order No. 12, dated January 13, 1950, he is also hereby authorized to hear and pass upon in Rizal City beginning May 13, 1950, the motion for reconsideration dated May 9, 1950 filed by the plaintiffs in civil case No. 1097, John Canson et al., plaintiffs, *vs.* the Honorable, the Secretary of the Interior et al, and to continue the hearing of said case and to enter final judgment therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 59

May 13, 1950

AUTHORIZING JUDGE BONIFACIO YSIP, FIFTH JUDICIAL DISTRICT, BULACAN, FIRST BRANCH, TO DECIDE IN QUEZON CITY CERTAIN CASES.

In the interests of the administration of justice and pursuant to the request of the Honorable Bonifacio Ysip, Judge of the Fifth Judicial District, Bulacan, First Branch, he is hereby authorized to decide in Quezon City from May 2 to 16, 1950, the following cases;

Criminal case No. 1073, "People *vs.* Ricardo Marcelo, et al."

Criminal case No. 1003, "People *vs.* Conrado Garcia."

Criminal case No. 1047, "People *vs.* Delfin Vergara e Ismael."

Criminal case No. 1037, "People *vs.* Celestino Cruz and Eugenio Santos."

Criminal case No. 1038, "People *vs.* Celestino Cruz."

Land Registration Case No. 71, G.L.R.O. Rec. No. 1120, Luisa Villarica, applicant *vs.* Patricio Pagsumbungan & others, oppositors.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 60

May 13, 1950

TEMPORARILY DETAILING ASSISTANT PROVINCIAL FISCAL OF RIZAL IRINEO V. BERNARDO TO QUEZON CITY.

In the interest of the public service and pursuant to the provisions of Section 1680 of the Revised Administrative Code, Mr. Irineo V. Bernardo, Assistant Provincial Fiscal of Rizal, is hereby temporarily detailed to Quezon City, there to assist the city attorney thereof in the discharge of his duties, effective immediately and to continue until the return of Special Counsel Jose Padilla, now designated acting municipal judge of said City.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 61

May 13, 1950

TEMPORARILY DESIGNATING SPECIAL COUNSEL OF OZAMIS CITY FIDEL E. YNOT AS CITY ATTORNEY THEREOF.

In the interest of the public service and pursuant to the provisions of existing law, Mr. Fidel E. Ynot, Special Counsel of Ozamis City, is hereby temporarily designated to perform the duties of City Attorney thereof, effective May 16, 1950, and to continue only during the leave of absence of Mr. Paterno Taclob, the present incumbent.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 62

May 15, 1950

AUTHORIZING JUDGE-AT-LARGE FELICISIMO OCAMPO TO DECIDE IN MANILA A CERTAIN CASE

In the interest of the administration of justice and pursuant to the request of Judge-at-Large Felicisimo Ocampo, he is hereby authorized to decide in Manila from May 25, 1950, criminal case entitled, "People *vs.* Jose Bueno" of the Court of First Instance of Negros Oriental, which was previously tried by him while holding court in said province.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 63

May 17, 1950

AUTHORIZING JUDGE-AT-LARGE FELICISIMO OCAMPO TO HOLD COURT IN THE PROVINCE OF PANGASINAN

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 206, the Honorable Felicisimo Ocampo, Judge-at-Large, is hereby authorized to hold court in the Province of Pangasinan, beginning June 1, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 64

May 17, 1950

AUTHORIZING JUDGE-AT-LARGE MAGNO S. GATMAITAN TO HOLD COURT IN MANILA, TO PRESIDE OVER BRANCH VII OF THE COURT OF FIRST INSTANCE OF MANILA.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Magno S. Gatmaitan, Judge-at-Large, is hereby authorized to hold court in Manila, to preside over Branch VII, of the Court of First Instance of Manila, beginning June 1, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

This amends Administrative Order No. 57 of this Department dated May 11, 1950, insofar as the assignment of judges for the City of Manila and the province of Pangasinan is concerned.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 65

May 20, 1950

TEMPORARILY DETAILING ACTING ASSISTANT PROVINCIAL FISCAL AMADO GADOR OF OCCIDENTAL MISAMIS AS CITY ATTORNEY OF OZAMIS CITY.

In the interest of the public service and pursuant to the provisions of Section 1680 of the Revised Administrative Code, Mr. Amado Gador, Acting Assistant Provincial Fiscal of Occidental Misamis, is hereby temporarily detailed to Ozamis City, there to perform the duties of city attorney, effective immediately and to continue until the return of the present incumbent who is on leave.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 66

May 24, 1950

AMENDING ADMINISTRATIVE ORDER NO. 57, DATED MAY 11, 1950, INSOFAR AS THE ASSIGNMENT OF JUDGES-AT-LARGE AND CADASTRAL JUDGES FOR THE PROVINCES OF LA UNION, ILOCOS SUR, ABRA, LEYTE, CAPIZ, RIZAL, AND THE CITY OF MANILA IS CONCERNED.

Administrative Order No. 57 of this Department, dated May 11, 1950, is hereby amended insofar as the assignment of Judges-at-Large and Cadastral Judges for the provinces of La Union, Ilocos Sur, Abra, Leyte, Capiz, Rizal and the City of Manila is concerned to read as follows:

In the Province of La Union, Judge-at-Large Roman Campos to try all kinds of cases;

In the Provinces of Ilocos Sur and Abra, Cadastral Judge Jose C. Zulueta to try all kinds of cases;

In the Province of Leyte (Tacloban), Cadastral Judges Juan L. Bocar and Jose S. Rodriguez to try all kinds of cases;

In the Province of Capiz (Calivo), Cadastral Judge J. Querubin to try all kinds of cases;

In the Province of Rizal, Judges-at-Large Demetrio B. Encarnacion (Pasig) and Magno S. Gatmaitan (Caloocan) to try all kinds of cases; and

In the City of Manila, Judges-at-Large Oscar Castelo, Tiburcio Tancinco, Agustin P. Montesa, Alejandro Panlilio, Gabino S. Abaya and Juan Liwag to try all kinds of cases.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 67

May 23, 1950

MAKING ASSIGNMENTS OF CERTAIN PROVINCIAL FISCALS EFFECTIVE IMMEDIATELY

In the interest of the public service and pursuant to the provision of section 1680 of the Revised Administration Code, the following assignments are hereby made effective immediately:

1. Mr. Ricardo D. Garcia, Provincial Fiscal of Surigao, to be temporarily detailed to Masbate, there to discharge the duties of provincial fiscal thereof;

2. Mr. Diosdado Bacolod, Provincial Fiscal of Misamis Occidental, to be temporarily detailed to Surigao, there to discharge the duties of provincial fiscal thereof; and

3. Mr. Candido Franzuela, Provincial Fiscal of Masbate, to be temporarily detailed to Misamis Occidental, there to discharge the duties of provincial fiscal thereof.

RICARDO NEPOMUCENO
Secretary of Justice

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

FIBER INSPECTION SERVICE

FIBER INSPECTION ADMINISTRATIVE ORDER NO. 4–3

January 1, 1950

AMENDMENT TO FIBER INSPECTION ADMINISTRATIVE ORDER NO. 4 (REVISED) TO INCLUDE "BUNTAL" FIBER (CORYPHA ELATA, ROXB.) AND ESTABLISH STANDARD GRADES FOR SUCH FIBER UNDER ITS REGULATIONS.

1. Pursuant to the provisions of section 1772 of the Revised Administrative Code, and in view of the growing importance as an export product now being attained by buntal fiber produced from buri palm (Corypha elata, Roxb.) grown in the Philippines, the pertinent provisions of Administrative Order No. 4 (Revised) are hereby further amended to include buntal for which the following official standards are hereby established for the information and guidance of all concerned:

Letter designation	Name of grade
(1) BUN–A	Buntal special
(2) BUN–1	Buntal soft fine
(3) BUN–2	Buntal soft coarse
(4) BUN–3	Buntal medium fine
(5) BUN–4	Buntal medium coarse
(6) BUN–X	Buntal hard mixed
(7) BUN–Y	Buntal damaged

DESCRIPTION OF THE GRADES

Special Grade

BUN–A. *Buntal Speacial.*—This is the highest grade of buntal. It consists of extra fine, soft fibers of the sizes under ½ millimeter in width. Its color generally ranges from light-ivory to ivory, and it varies ordinarily from 60 to 120 centimeters in length.

The production of this grade of buntal is very limited because of the difficulty of its extraction. Buntal is produced in the form of pure fiber, extracted by pulling in its natural cylindrical shape and size from the petioles of the buri palm, so that unless the buri is of the variety that yields soft, strong fiber, no fiber of the sizes for this grade could become extractable along with the coarser ones as they are cut off easily during the process of extraction. Hence, very little of this grade is produced.

The bulk of production of buntal therefore is of the coarser grades of fibers ranging from ½ millimeter to about 1¼ millimeters in width, generally produced for hat weaving and other allied articles like fancy baskets, glass disc-covers, cigarette cases and others. It is to be observed that, after the "Buntal Special" grade, there are there principal groups of grades which constitute the ordinary grades and are described as soft, medium or hard depending on the fiber's most important quality—flexibility. So, texture is, therefore, the basic quality which determines each of these groups of grades and, in like manner, the size of the fiber determines the grade in each group, whether fine or coarse, into which the fiber may be graded except that for the hard texture which is, for the present, combined in one grade only.

And, in preparing such fibers for the grade after drying, the fibers, grouped first into fine and coarse sizes, are tied in small hanks and afterward passed through several times from under a wooden roller-press made for the purpose so as to flatten and render the fibers more pliable and become better adapted for weaving. The length of buntal fiber depends on the length the petioles are cut for fiber extraction which is usually four feet, or about 120 centimeters—the length calculated necessary for hat weaving; although, during the process of extraction, shorter fibers are inevitably produced leaving their lengths to vary from 50, or even less, to 120 centimeters. No fiber below 60 centimeters in length, however, are permitted in the normal grades; such very short fibers will be graded into "Damaged." The slight variance in color of the fiber is consiered of minor importance in grading the fiber since it is easily overcome by bleaching the finished articles.

Ordinary Grades

BUN–1. *Buntal Soft Fine.*—The fiber in this grade is soft in texture and the size is fine, ranging from ½ to ¾ millimeter in width. Normally, its color resembles that of the grade BUN–A, light ivory to ivory. This, however, due to delayed drying or prolong exposure in storage, may assume the shade of very light brown color. The length generally ranges form 80 to 120 centimeters.

BUN–2. *Buntal Soft Coarse.*—The fiber in this grade is identical texture, color and length to those of "Buntal Soft Fine." The difference lies only in the size of the fiber which, for this grade, is coarse—ranging over ¾ millimeter but generally not exceeding 1¼ millimeters.

BUN–3. *Buntal Medium Fine.*—The fiber of this grade is of the medium texture in which it only differs from the "Buntal Soft Fine" grade. But in both grades their sizes and lengths are practically identical. Its harder texture is due to prolonged exposure to the sun in drying after extraction, long storage and, to some extent, the age of the petioles when these are cut from its trunk; hence its relative lower color than those of the "soft" grades.

BUN–4. *Buntal Medium Coarse.*—As in the case of BUN–1 and BUN–2, the difference between the BUN–3 and BUN–4, lies only in the size of the fiber which, for this grade, is coarse. But its

texture, color and length are practically identical to those of BUN–3 although quite frequently the color of BUN–4 assumes darker shade.

BUN–X. *Buntal Hard Mixed.*—This grade consists of fibers of the fine and coarse sizes which are relatively hard in texture. The fiber is not pliable enough for hat weaving but it could still be woven into other articles that require less flexibility. The length is similar to that for the other grades with slight varying colors ranging from ivory to light brown.

Damaged Grade

BUN–Y. *Buntal Damaged.*—This grade consists of partly soiled or stained fibers of all sizes and those others too hard in texture or stiffened due to long storage, or too short to be included in normal grades.

PRACTICAL TEST TO DETERMINE TEXTURE

For practical purposes, the texture of buntal fiber may be determined by winding the fiber around one's finger. Fiber of the soft texture would loop around the finger without bending it to form knuckle-joints as it would curve smoothly around. For fiber of the medium texture, while it would not sharply form knuckles as would the fiber of the hard texture upon winding it around the finger, smooth knuckle-like joints, nevertheless, would become appreciably noticeable. They would not dent, however, the pliability of the fiber so markedly as would those of the fiber of the hard texture.

BALING

2. Buntal fiber shall be tied into hanks of two to three centimeters in diameter at the heads. The butt end of each hank, not less than eight nor more than 10 centimeters in length, shall be doubled and tied over the tie to prevent the fibers from falling off. The hanks are laid straight full length in the bale and in layers of individual hanks, the heads of each layer alternating with the tips of the other in order not to impair the quality of the fiber.

Each bale, when wrapped in bundle with thick paper and petate, and afterward sewed fittedly in burlap sack shall be of the following dimension: 1.25 meters long, 45 centimeters wide and 35 centimeters high with a net weight of 50 kilos; or, when encased in thick paperlined box, made of wood of ordinary thickness, instead of bundle in burlap sack, the box shall measure on the outside 1.25 meters long, 40 centimeters wide and 30 centimeters high, with a net weight of 25 kilos only.

3. Other rules and regulations governing tagging, marking, inspection and shipment as contained in Administrative Order No. 5, shall apply to buntal fiber as in the case of abaca, maguey, ramie and other fibers included in Administrative Order No. 4 (Revised).

4. This Administrative Order shall take effect six months after its approval and official publication as required by law.

PLACIDO L. MAPA
Secretary of Agriculture and Natural Resources

Recommended by:

ANTONIO LEJANO
Manager, Fiber Inspection Service

BUREAU OF FORESTRY

FORESTRY ADMINISTRATIVE ORDER NO. 12

September 29, 1949

AMENDMENTS TO FORESTRY ADMINISTRATIVE ORDER NO. 22, KNOWN AS THE REVISED CLASSIFICATION OF TREES INTO GROUPS.

Pursuant to the provisions of section 79 (B), 1817 and 1821, as amended by Republic Act 370 of Act No. 2711, known as the Revised Administrative Code, amendments to the rules and regulations provided in Forestry Administrative Order No. 22, known as the Revised Classification of Trees into Groups are hereby promulgated for the information and guidance of all concerned.

SECTION 1. *Title.*—This regulation shall be known as the "1949 Classification of Trees into Groups."

SEC. 2. *Groups of trees.*—The various trees shall be classified into four groups as follows:

(*a*) FIRST GROUP

Official name	Scientific name
Akle	*Albizzia acle.*
Aranga	*Homalium,* all species.
Bansalagin	*Mimusops parviflora;* duyok-duyok (*M. calophylloides*).
Banuyo	*Wallaceodendron celebicum.*
Batikuling	*Litsea leytensis;* bakan (*L. philippinensis*); matangusa (*L. euphlebia*) and other species having soft yellow wood of similar type.
Batitinan	*Lagerstroemia periformis.*
Betis	*Madhuca betis.*
Dañgula or Sasalit	*Vitex aherniana.*
Dao	*Dracontomelium dao.*
Duñgon	*Tarrietia sylvatica.*
Ebony	*Diospyros ferrea.*
Ipil	*Intsia,* all species.
Kaburo	*Phoebe sterculioides.*
Kalamansanai	*Neonauclea calycina;* Hambabalud (*N. formicaria*); Lisak (*N. bartlingii*); Tiroron (*N. gracilis*); Tikim (*N. vidalii*); Uisak (*N. media*); Malauisak (*N. reticulata*) and all other species except Ludek (*N. bernadoi*).
Kalantas	*Toona,* all species.
Kamagong or Mabolo	*Diospyrs discolor* and other species with reddish brown sapwood and black heartwood or with reddish brown streaky heartwood.
Kulilisiau	*Machilus philippinensis.*
Malabuñga	*Nothaphoebe malabuñga.*
Mancono	*Xanthostemon verdugonianus.*
Margapali	*Dehaasia triandra.*
Molave	*Vitex parviflora;* hairy leaf molave (*V. pubescens*) and other species with wood of same type.
Narra	*Pterocarpus,* all species.
Sañgilo	*Pistacia chinensis.*
Supa	*Sindora supa.*
Tambulian	*Eusideroxylon zawageri.*

Official name	Scientific name
Teak	*Tectona grandis.*
Tindalo	*Pahudia rhomboidea.*
Urung	*Fagraea cochinchinensis.*
Yakal	*Shorea gisok;* gisok (*S. astylosa*); malayakal (*S. seminis*); malibato (*S. malibato*); yamban (*S. falciferiodes*) small leaf yakal (*S. ciliata*); sapluñgan (*Hopea plagata*); Basilan yakal (*H. basilanica*); kaliot (*H. malibato*); magasusu (*H. mindanensis*).

(*b*) SECOND GROUP

Akleng-parang	*Albizzia procera* and other species with wood of same type.
Alupag	*Euphoria,* all species big enough to produce timber.
Alupag-amo	*Litsea philippinensis.*
Amayan	*Angelesia splendens.*
Anubing	*Artocarpus cumingiana;* kubi (*A. lamellosa*); kalulot (*A. rubrovenia*) and other species with mood of same type.
Balu	*Cordia subcordata.*
Banaba	*Lagerstroemia speciosa.*
Bitanghol or palomaria del monte	Callophyllum blancoi and other species not listed by name.
Bitaog or palomaria de la playa	*Calophyllum inophyllum.*
Bolong-eta	*Diospyros philosanthera* and other species with characteristic reddish sapwood and little or no black heartwood.
Caña-fistula	*Cassia fistula* and other species with wood of same type.
Duñgon-late	*Heritiera litoralis.*
Guijo	*Shorea guiso.*
Gisok-gisok	*Hopea philippinensis.*
Katmon	*Dillenia,* all species.
Kayu-galu	*Sindora galeduap.*
Lanete	*Wrightia laniti.*
Makaasim	Zyzygium, all species.
Malabayabas	*Tristania decorticata;* taba (*T. littoralis*); Tiga (*T. micrantha*).
Malakadios	*Beilschmiedia cairocan* and other species.
Malugai	*Pometia pinnata.*
Manggachapui	*Hopea acuminata;* daliñdiñgan (*H. foxworthyi*).
Manggis	*Koompasia excelsa.*
Mapilig or Dirigkalin	*Xanthostemon bracteatus.*
Maranggo	*Azadirachta integrifolioda.*
Narek	*Balanocarpus cagayanensis;* Mindanao narek (*S. brachypterus*).
Narig	*Vatica,* all species.
Pagatpat	*Sonneratia alba* and other species.
Sudiang	*Ctenolophon philippinensis.*
Tabau	*Lumnitzera littorea.*
Tamayuan	*Strombosia philippinensis.*
Tañglin	*Adrenanthera intermedia.*
Tukang-kalau	*Aglaia clarkii.*

(*c*) THIRD GROUP

Agoho	*Casuarina equisetifolia;* agoho del monte (*C. rumphiana*) and other species.
Almaciga	*Agathis alba.*
Amugis	*Koordersiodendron pinnatum.*
Anislag	*Securinega flexuosa.*
Antipolo	*Artocarpus blancoi* and all other species with large incised leaves and wood of same type.
Apitong	*Dipterocarpus grandiflorus;* hagakhak (*D. warburgii*) panau (*D. gracilis*) and other species.
Bagras or Amamanit	*Eucalyptus deglupta.*
Bahai	*Ormosia calavensis* and other species.
Batino	*Alstonia macrophylla* and other species except dita (*A. scholaris*).
Batukanag	*Aglaia bicolor* and other species not listed by name.
Bayanti	*Aglaia llanosiana.*
Binggas	*Terminalia comintana.*
Bulala	*Nephelium mutabile.*
Gisihan	*Aglaia laevigata.*
Harras	*Garcinia ituman.*
Kalifigag	*Cinnamomum mercadoi.*
Kalumpit	*Terminalia edulis;* dalinsi (*T. pellucida*); sakat (*T. nitens*).
Kamatog	*Erythrophloeum densiflorum.*
Kamuning	*Murraya paniculata.*
Kato	*Amoora aherniana* and other species.
Kayatau	*Dysoxylum turczaninowii.*
Kuling-manuk	*Aglaia luzoniensis.*
Lamio	*Dracontomelun edule.*
Lamog	*Planchonia spectabilis.*
Lumbayau	*Tarrietia javanica; lumbayau-bato (Tarrietia sp.).*
Lanipau	*Terminalia crassiramea.*
Lanutan	*Bembycidendron,* all species.
Liusin	*Parinarium corymbosum* and other species.
Malaguijo or Malakayan	*Shorea plagata.*
Malabatino	*Paralstronia clusiacea.*
Malakamañga	*Reinwardtiodendron celebicum.*
Malakauayan	*Podocarpus,* all species.
Malapinggan	*Trichadenia philippinensis.*
Malatumbaga	*Aglaia harmsiana.*
Malibayo	*Berria cordifolia.*
Malasaging	*Aglaia diffusa.*
Malasantol	*Sandoricum vidalii.*
Mangkas	*Sideroxylon gerrugineum.*
Mayapis	*Shorea squamata.*
Miao	*Dysoxylum euphlebium* and other species of wood of same type.
Nangka	*Artocarpus heterophylla.*
Nato	*Palaquium luzoniense;* malak-malak (*P. philippinse*) palak-palak (*P. lanceolatum*); manik-manik (*P. tenuipetiolatum*); alakaak (*P. gigantifolium*) and other species.
Oak or Olayan	*Quercus,* all species.
Pahutan	*Mangifera altissima.*
Palosapis	*Anisoptera thurifera;* afu (*A. brunnea*) dagang (*A. aurea*); Mindanao palosapis (*A. mindanensis*)
Piagau	*Xylocarpus moluccensis.*
Pine, Benguet	*Pinus insularis,* Mindoro pine (*P. merkusii*)
Red lauan	*Shorea negrosensis.*
Salakin	*Aphanamixis cumingiana.*
Santol	*Sandoricum koetjape.*
Tabigi	*Xylocarpus granatum.*
Tugbok	*Stemonurus secundifolius.*
Talisai	*Terminalia catappa.*
Talisai-gubat	*Terminalia oocarpa.*
Tañgile	*Shorea polysperma;* Tiaong (*Shorea sp.*)
Toog	*Petersianthus quadrialata.*

(*d*) FOURTH GROUP

The fourth group shall include all other species not mentioned in any of the above groups.

SEC. 3. *Date of effectivity.*—This Order shall take effect on October 1, 1949.

PLACIDO L. MAPA
Secretary, Department of Agriculture and Natural Resources

Recommended by:

For and in the absence of the Director of Forestry:

FELIPE R. AMOS
Chief, Division of Sawmills and Utilization

FORESTRY ADMINISTRATIVE ORDER NO. 13

May 26, 1950

AMENDMENTS TO FORESTRY ADMINISTRATIVE ORDER NO. 11, AS AMENDED BY FORESTRY ADMINISTRATIVE ORDERS NOS. 11-1, 11-2, 11-3, 11-4, 11-5, 11-6, 11-7 and 11-8.

1. A new paragraph to be known as paragraph (*d*) is hereby inserted between section 14, par

graph (*c*) and section 14-A of the same Forestry Administrative Order No. 11, as amended by Forestry Administrative Order No. 11–7, which read as follows:

"(*d*) By the Provincial Forester:

"(1) Gratuitous licenses or permits:

"(*aa*) Private gratuitous license for cutting and gathering of first group timber not to exceed 20 cubic meters, for the personal use of bonafide residents of a municipality.

"(*bb*) Private gratuitous license for cutting and gathering of first group timber not to exceed 30 cubic meters also for the personal use of bonafide residents of a municipality for which a communal forest has not been established.

"(*cc*) Private gratuitous license or permit for cutting and gathering of minor forest products in reasonable amount, except those falling under Act No. 3983, for domestic use of bonafide residents of a municipality for which a communal forest has not been established.

"(2) Public gratuitous licenses:

"(*aa*) Public gratuitous license for cutting and gathering timber to be used for each specific project not to exceed 200 cubic meters."

2. Section 26, paragraph (*c*) of said Forestry Administrative Order No. 11, as amended by Forestry Administrative Order No. 11–7, is hereby further amended to read as follows:

"(*c*) For each private gratuitous license, ₱5."

3. This Forestry Administrative Order shall take effect upon its approval.

Approved May 31, 1950.

PLACIDO L. MAPA
Secretary of Agriculture and Natural Resources

Recommended by:

FLORENCIO TAMESIS
Director of Forestry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad interim appointments confirmed by the Commission on Appointments on April 25, 1950:

Rafael Cañiza, Solicitor in the Office of the Solicitor General. Atanacio R. Ombac, Gaudencio Bocobo, Andres Reyes and Pedro Asis, Jr., Assistant Fiscals of Manila.

Delfin Vir. Suñga, Assistant Provincial Fiscal of Camarines Norte.

Jose Agudo, Jr., Justice of the Peace of Ivana, Uyugan and Sabtang, Batanes; Juan Cortez of Dumalag and Tapaz, Capiz; Salvador Calizo of Balete, Capiz; Juan Sarmiento of Bato and Baras, Catanduanes; Reynerio P. Agatep of San Mariano Isabela; Andres D. Franco of Victoria, Laguna; Primitivo Peñaranda of Tanauan and Tolosa, Leyte; Mariano Villanueva of Bolinao, Pangasinan; Amancio Bauzon of San Manuel, Pangasinan; Artemio Villanueva of Baler, Quezon; Lucia Zafranco of Polillo, Quezon; Mapalad Mañadiego of Mulanay, Quezon; Fausto Maquiniano of San Jose, Samar; Lorenzo Gonzame of Catubig and Las Navas, Samar; and Felipe Alde (Auxiliary) of Quinapandan and MacArthur, Samar.

Ad interim appointments confirmed by the Commission on Appointments on May 5, 1950:

Hon. Jose P. Carag, Provincial Governor of Cagayan.

Mrs. Antonio Vasquez, Member of the Board of Review for Moving Pitcures for a term expiring on February 16, 1953.

Pastor de la Cerna, Provincial Treasurer of Bukidnon.

Menandro Tavera, City Treasurer of Ormoc City.

Leonardo J. Oteyza, City Treasurer of the City of Ozamis.

Manuel Estipona, Member of the Board of Tax Appeals of the Province of Camarines Sur.

Constante Rosal, Assistant Provincial Fiscal of Ilocos Sur.

Angelino Banzon, Justice of the Peace of Pilar, Bataan; Federico Deocampo of Panay and Panitan, Capiz; Juan Quema of Lidlidda and San Emilio, Ilocos Sur; Dominador Mina of Antatet and Cabatuan, Isabela; Flaviano Agpalza of San Agustin, Isabela; Cirilo Villamin of Cavinti and Luisiana, Laguna; Pedro K. Palaña, Jr., of Palo, Leyte; Rufino Galindo of Clarin and Tudela, Misamis Occidental; Isagani More of Baliangao, Misamis Occidental; Ruperto Torres of Sipalay and Asia, Occidental Negros; Felix de Castro, Jr., of Alaminos and Sual, Pangasinan; Pedro Cristobal of Mabini, Pangasinan; Salvador Mananzan of Bayambang, Pangasinan; and Bernardino Muncada of Palapag and Gamay, Samar.

Dr. Demetrio Belmonte, Assistant City Health Officer of Manila.

Hon. Igancio Santos Diaz, Member of the Capital City Planning Commission.

Ad interim appointments confirmed by the Commission on Appointments on May 11, 1950:

Hon. Carlos P. Romulo, Secretary of Foreign Affairs.

Hon. Roberto Regala, Envoy Extraordinary and Minister Plenipotentiary.

Evaristo Pecson, Vice-Consul of the Philippines.

Hon. Luis P. Torres, Mayor of the City of Baguio.

Ramon Dado, Jr., Provincial Treasurer of Abra.

Rodrigo Acosta, City Treasurer of the City of Legaspi.

Osorio L. Calejesan, Provincial Assessor of Surigao.

Felixberto Milambiling, Solicitor in the Office of the Solicitor General.

Toribio S. Mayo, Assistant Provincial Fiscal of Mt. Province.

Antonio Fortugaleza, Assistant Provincial Fiscal of Zamboanga.

Gregorio B. Amiana, Justice of the Peace of Cabadbaran and Jabonga, Agusan; Flor Egipto of Alicia, Isabela; Arturo Arnau of Dimasalang, Masbate; and Esteban Ilao of Guiuan, Salcedo and Balangiga, Samar.

Hon. Rafael Jalandoni, Mayor of the City of Iloilo.

Ad interim appointments and nominations confirmed by the Commission on Appointments on May 16, 1950:

Hon. Jose Mencio, Provincial Governor of Mountain Province.

Jesus G. Lapus, Member of the Municipal Board of the City of Manila.

Fernando Monleon, Member of the Municipal Board of the City of Manila.

Rodrigo Acosta, Provincial Treasurer of Bukidnon.

Julio Abadies, Chairman of the Board of Tax Appeals of Ozamis City.

Hermenegildo A. Carpio, Member of the Board of Tax Appeals of Cam. Sur.

Pio Mendoza, Member of the Board of Tax Appeals of Pampanga.

Segundo Gloria, Member of the Board of Tax Appeals of Ilocos Norte.

Vicente Francisco, Member of the Board of Tax Appeals of Isabela.

Melecio Palma, Provincial Treasurer of Leyte.

Amadeo Eugenio, Provincial Treasurer of La Union.

Cornelio R. Oliver, City Treasurer of the City of Davao.

Arsenio M. Lim, Provincial Assessor of Misamis Oriental.

Honorato Edaño, Assistant City Assessor of the City of Manila.

Alfredo Laya, Assistant Provincial Fiscal of Ilocos Sur.

Andres Delfino, Assistant Provincial Fiscal of Leyte.

Juan Catalan, Assistant Provincial Fiscal of Negros Oriental.

Cipriano Cabaluna, Clerk of Court of the Court of First Instance of Iloilo.

Francisco Prosianos, Justice of the Peace of Kapalong, Davao; Fermin Quejada of Dagami and Pastrana, Leyte; Martin Biscocho of Tuy and Nasugbu, Batangas; Benjamin Zaragosa of Sta. Cruz and Sta. Lucia, Ilocos Sur; Melecio Lobinco of Tumbao, Cotabato; Quirino Sadang of Solano and Bagabag, Nueva Vizcaya (Auxiliary); Ciriaco V. Tupas of Dulag and Abuyog, Leyte (Auxiliary); Braulio Hurtado of Koronadal, Cotabato; Rosalio E. Cabido of Borja and San Jacinto, Bohol; Cornelio Lauron of Lambunao, Iloilo; Conrado V. de Leon of Lumbatan, Bayang, Butig and Binidayan, Lanao; Amador Gonzales of Dao and Anini-y, Antique; Vicente Ocampo of Abuyog and Tawide, Leyte; Rosario de Veyra of Dulag and Julita, Leyte; Avelino Rosal of Hilongos, Leyte; Ricardo Letrando of Isabel, Leyte; Paterno Castor of Tabango, Leyte; Mamerto Polongcos of Cabucgayan, Leyte; Arturo Villar of La Castellana, Occidental Negros; Angel Gabriel of Himamaylan, Occidental Negros; and Leonardo Javellana of Ilog, Occidental Negros.

Ad interim appointments and nominations confirmed by the Commission on Appointments on May 8, 1950:

Hon. Emilio Abello, Envoy Extraordinary and Minister Plenipotentiary.

Manuel E. Buenafe, Assistant Director of the Census and Statistics.

Felix V. Vergara, Member of the Board of Tax Appeals of Ilocos Sur.

Gerardo Aseneta, Chairman of the Board of Tax Appeals of Nueva Ecija.

Martin Kintanar, Chairman, and Benjamini Limaga, Ramon F. Centeno, Ramon Pastor Jr., and Silvestre Mabutas, Members of the Board of Tax Appeals of the City of Dumaquete.

Lucio Sanchez, Register of Deeds of Ormoc City.

Joel Joco; Justice of the Peace of Limay, Bataan; Filoteo Banzon of Orion, Bataan; Juan Valdez of Kabacan, Cotabato; Mabini S. Katalbas of San Carlos, Negros Occidental; Oscar P. Siat of Cagayancillo and Puerto Princesa, Palawan; Leon Zuba (Auxiliary) of Guiuan, Salcedo and Balingaga, Samar; Jose B. Sapuriada of Margosatubig, Zamboanga.

Hon. Prospero Sanidad, Member of the National Power Board for term expiring June 30, 1950.

Hon. Cornelio Balmaceda, Chairman of the Board of Director of the National Tobacco Corporation for a term expiring August 28, 1954.

Hon. Regino G. Padua, Member of the Metropolitan Water District Board for a term expiring June 30, 1952.

Hon. Pio Pedrosa, Member of the Board of Regents of the University of the Philippines for a term expiring August 6, 1956.

Major Gervacio Francisco, Member of the Philippine Veterans Board.

Appointments, nominations and designations subject to the confirmation of the Commission on Appointments:

Hon. Prospero Sanidad, appointed ad interim Member of the National Economic Council to continue only while Secretary of Public Works and Communications, May 19, 1950.

Hon. Carlos Revilla, appointed ad interim Mayor of Rizal City, May 19, 1950.

Pablo Cuneta, appointed ad interim Vice-Mayor of Rizal City, May 19, 1950.

Pablo Cuneta, designated Acting Mayor of Rizal City, May 19, 1950.

Hon. Ricardo Nepomuceno, reappointed ad interim Chairman, and Hon. Teodoro Evangelista and Hon. Pio Joven, reappointed ad interim Members of the Civil Service Board of Appeals, May 27, 1950.

Aurelio Periquet, appointed ad interim Chairman, and Alfonso Calalang and Helen Benitez, ad interim Members of the Import Control Board, May 27, 1950.

Sofia de Veyra, appointed ad interim Member of the Board of Pardons and Parole, May 19, 1950.

Hon. Cecilio Putong, appointed ad interim Member of the Government Service Insurance Board, May 19, 1950.

Jose M. Reyes, appointed ad interim Member of the Board of Directors of the Philippine Charity Sweepstakes, May 22, 1950.

Hon. Prospero Sanidad, appointed ad interim Chairman of the Board of Directors of the National Airports Corporation, May 19, 1950.

Ciriaco Latonero, appointed ad interim Provincial Treasurer of Bataan, May 19, 1950.

Gregorio F. Esclavilla, appointed Acting Justice of the Peace of Caluya, Antique, May 5, 1950.

Julian F. Salcedo, appointed ad interim Justice of the Peace of Pikit, Cotabato; May 27, 1950.

Alfredo P. Delumpa, appointed ad interim Auxiliary Justice of the Peace of Dumangas and Barotac, Iloilo, May 19, 1950.

Lucio Parco, appointed ad interim Justice of the Peace of Zamboanguita and Siaton, Oriental Negros, May 27, 1950.

Amado B. Guico, appointed ad interim Justice of the Peace of Sto. Tomas, Pangasinan, May 27, 1950.

MUNICIPAL OFFICIALS

Damian Figuro, appointed Councilor of Sabtang, Batanes, May 18, 1950.

Julio V. Perez, appointed Councilor of Libacao, Capiz, May 11, 1950.

Dalmacio Mabanag, appointed Councilor of Aloguinsan, Cebu, May 16, 1950.

Teodorico Gomeri, appointed Mayor, Manuel A. Palma, Vice-Mayor, and Leopoldo Somes, Anacleto Abanero and Morada de la Cruz, Councilors of Batad, Iloilo, May 22, 1950.

Enrique Jallorina, appointed Vice-Mayor, and Serafin Uy Villanueva, Fe Mamon, Domingo Gabo and Felix Hiponia, Councilors of Balasan, Iloilo, May 22, 1950.

Inocencio Estebel, appointed Vice-Mayor of Majayjay, Laguna, May 4, 1950.

Marcos Magsalansan, appointed Councilor of Pakil, Laguna, May 18, 1950.

Santiago Ancheta, appointed Councilor of Caba, La Union, May 18, 1950.

Silvino Adisas, appointed Councilor of Barugo, Leyte, May 2, 1950.

Sulpicio P. Bongalon, appointed Mayor of Linugos, Misamis Oriental, May 6, 1950.

Asuncion de Cabunoc, appointed Councilor of Lagonglong, Misamis Oriental, May 17, 1950.

Fausto Sogocio, appointed Councilor of Valencia, Negros Oriental, May 18, 1950.

Melecio Uson, appointed Councilor of Sual, Pangasinan, May 18, 1950.

Crisostomo Llamas, appointed Councilor of Mauban, Quezon, May 6, 1950.

Casiano Abelido, appointed Councilor of Calbiga, Samar, May 2, 1950.

HISTORICAL PAPERS AND DOCUMENTS

Address of His Excellency, President Elpidio Quirino, on Labor Day, May 1, 1950:

I welcome this opportunity to greet you on this day which is sacred to the workingmen of this country and throughout the world.

I rejoice with you on the commemoration of this historic day. It is with pride that I trace my own humble origins to your ranks. I ask you to accept this fact as an assurance of my sincere and abiding interest in your welfare and my desire to keep open to the man who toils all opportunities for honest advancement from the lowest to the highest position in the land.

Our present era is truly the era of the common man. In the civilized world today, no social development is more significant than the organized efforts of the workers assisted by the state to improve their living conditions. Our own Constitution was drafted and promulgated in the light of this universal development, and the principles of social justice enshrined therein provide a healthy norm for the conduct of our economic and social life.

It is by virtue of its social justice provisions that our organic law ranks with the most enlightened constitutions of modern times. It reflects the problems and issues that are of deep concern to modern man—the security of his livelihood, the assurance of proper working conditions and adequate wages with which to support himself and his family under decent standards of life.

As head of this nation, I am pledged to the faithful observance of these principles. As you are aware, my administration, pursuant to these principles and faithful to the program of social justice formulated since the time of President Quezon, has been sympathetic to all reforms tending to improve the lot of the workingman.

This policy will continue. There shall be no turning back on our program of social justice.

I would now like to draw your attention to certain aspects of the labor movement in our country which require your most careful consideration. I believe the time has come when Philippine labor should pause and with full sense of responsibility consider how it would better fit itself into the economic pattern just evolving. It will profit you greatly to know how far labor has progressed, where it stands at the present moment, and how best its gains and advances may be consolidated. I am

sure that, after careful self-reexamination, labor will have a better understanding of its role in our program of economic rehabilitation and development.

Many are wont to believe that the lot of the workers can be improved only by increasing wages and salaries and directly providing for the betterment of the working conditions of the masses. Of course, these are direct benefits accruing to the laboring class. But we forget that there are many other ways by which the same result of raising the standard of living of the common man may be achieved. For instance, when we exert efforts to produce more rice, thus reducing the price of this prime commodity, we are, in effect, raising the purchasing power of the laborer to acquire other things to improve his standard of living. Also, when we create more jobs, we increase the field of choice for labor, benefiting both those actually employed and those seeking employment.

Again, when we impose import control on goods that can be produced locally, we encourage local industries and factories which in time will absorb back the labor of those whose services may have been dispensed with by the importing establishments. In the end, therefore, the number of workers who are employed in the new factories more than offsets the loss of jobs in the importing houses. Or, when we encourage the development of a home industry and help develop a market for its products abroad, we are, in fact, widening the opportunity of the workingman to sell his labor at home as well as abroad.

Thus, there are many hidden factors which only indirectly help to improve the lot of the workingman, yet whose far-reaching effects outweigh the direct benefits accruing to the laboring class in the form of increased wages or salaries, or by means of direct legislation to better the conditions of the workers.

Our program of total economic mobilization envisages the strengthening of all these factors in order to make secure not only the livelihood of the workingman but the economic stability of the nation.

There is one incontrovertible fact which must be borne in mind, and this is, that no demand for increase of wages or for the general amelioration of the lot of the workingman can be granted without first affording industry the means to do so. It is true to say that in these times no one with a family to support can live on a daily wage of two pesos. At the same time, it is unjust that an industry should be compelled to expend its capital investment in order to provide the right scale of wages to its workers, irrespective of the probable profits with which such wage demands must be met in the long run.

Industry is the business of both the employer and the laborer. Any over-emphasis on the interests of one at the expense of the other is not conducive to the promotion of industry. There must be a middle ground where both can see eye to eye and where they can come to an understanding as to how best the interests of both and the future of the industry may be promoted.

In this period of industrial readjustment in our country, when we are encouraging foreign and domestic capital to invest towards the promotion of our huge economic development program, it is opportune that we review not only the problems of labor in its efforts to improve its conditions, but also the possibilities of our industrial development. Thus, we can arrive at a reasonable adjustment between the objectives of labor and the needs of industry. On this question no amount of theorizing over the lot of the workingman or over the interests of the capitalist will help us evolve an ideal relationship between these two factors in our country. Much less can we rely for guidance exclusively on the experiences of other countries where conditions are different from those prevailing in our own.

The principal fact which we should consider in our program of economic and industrial development is that we are still building the national economy, that we cannot expect the full measure of benefits from the new industries at the very beginning. Such benefits grow and develop commensurately with the growth and development of the industries concerned. And until these industries are operating at a steady and normal pace, we cannot hope to establish a permanent standard of wages and living conditions for our workers.

The Government is doing everything in its power to make our country attractive to capital investment. Already several industrial enterprises have been established and others are in prospect as a result of this policy of attraction. But labor must do its share in hastening this process of industrial development. Labor must be ready to forego certain demands at the beginning which may scare away capital or render the establishment of new enterprises too hazardous for the investor.

The problems which confront all new enterprises include the raising of sufficient capital, heavy overhead, availability of raw materials, uncertain market possibilities, the hazards of competition, etc. Despite these risks, the investor will be greatly encouraged to go ahead if he is given some assurance by the Government that it is willing to forego burdensome taxes for a period, and if labor for its part will be equally willing to forego for a time any excessive wage demands.

Management, labor, the community, and the Government must consider themselves as partners in the development of new industries. They all have a stake in the success of every industrial enterprise: management in the form of eventual profits, labor in the form of wages and other benefits, the community in the form of goods and services, and the Government in the form of taxes. They are, in a sense, planting a tree together and each will have its rightful share in the season of harvest.

But before the harvest comes, there must be a spirit of mutual sacrifice as well as mutual encouragement in the relations between labor and management. More than a year ago, I created the Labor-Management Advisory Board in order that both elements may jointly study capital and labor problems, adjust their interests, and harness their common efforts to our development program. This body has helped us on several occassions in reconciling the differences between labor and management and in settling many strikes or attempts to strike during the past few months. I hope it will find means of following up its record of usefulness to the country during the forthcoming National Labor-Management conference which is to be held under its auspices.

Ours is a developing country, and a strike is a luxury we can ill afford. What we need is a moratorium on crippling strikes especially in the new industries. Forbearance and self-denial during the initial stage of any enterprise is bound to bring rich dividends for labor in the long run.

The Government has initiated the establishment of new industries, and foreign as well as private capital is being induced and encouraged to do the same.

New industries mean new opportunities for employment. Workers already employed have a responsibility to help assure work for the jobless. This is their duty to their less fortunate brothers. But more than that, it will in the end be to their interest to help reduce the ranks of the unemployed.

The reason for this is obvious. The more unemployed persons there are, the greater the competition among workers themselves, and the greater the tendency for wages to remain stationary or to fall through the operation of the law of demand and supply. Therefore, to reduce if not to eliminate unemployment altogether is, in effect to strengthen and stabilize the position of workers as a whole by minimizing the factor of competition in the labor market.

The administration's program of social amelioration will be pursued with vigor. We are attacking our social prob-

lems from all directions and with all the forces at our command. But, while the Government is duty bound to undertake such a program, our working citizens have an equal duty to help this program along—positively by rendering optimum service, and negatively by acts of self-restraint in the manner I have already indicated.

What I am proposing is that these measures of self-denial be taken by the free consent of the workers themselves. In return for such self-imposed discipline I give you the assurance on behalf of the administration that your interests and your welfare shall be fully protected in accordance with our constitutional obligations to the workers of our country.

In a free, democratic society, it takes little courage to fight for one's rights. What requires real courage is to accept the stern discipline of duty and responsibility. The rank-and-file must reject agitation for its own sake and insist upon a restrained and responsible leadership of labor.

Capital, on the other hand, must be guided in its relations with labor by motives more lofty than the selfish pursuit of profit. It must develop a social conscience. In the social order that I have in mind and which is envisaged in our fundamental law, there should be no exploitation of workers. Managment must regard labor as its full-fledged associate and partner and not merely as a tool of production.

The demand of the hour is labor-management statesmanship of a high order based on methods of enlightened self-interest and a just social conscience. This is the happy prospect which I hold out to you on the occasion of Labor Day.

Nineteenth Radio Chat of His Excellency, President Elpidio Quirino, May 15, 1950:

Fellow Countrymen:

As on every fifteenth of the month, here again I am talking directly to you from my study room at Malacañan. And it is straight talking, as members of the same family are wont to do in the face of grave problems.

There is no doubt that we are facing such problems. It is therefore no time for idle or irresponsible talk. The latter especially during the last few months has been doing our country and people considerable harm; we are, indeed, sustaining no little loss of credit and prestige abroad.

I am also mindful of what many are already saying that the matter with our country is that there is too much talk and too little constructive work. Of course, this is a complaint not confined to our borders. As for our coun-

try, however, my answer is very simple—an invitation to examine our present mode of life; to ascertain the state of our farms, our homes, our schools; to see our hospitals, our roads, our bridges, our ports; to review the status of our industries and commerce; to assess the strength of our foreign relations,—in short, an honest and conscientious appraisal of the Philippines of today—compared to four years ago.

Except in cases where talking is the only way to ease up some tense situation, people most everywhere have become and are confused, frightened and stumped by too much talking. What is not easily realized is that most everybody has a hand in it. Everybody is ready to point out what is wrong with everybody else. Seldom it is that a person starts with himself first so that he may understand the virtue of restraint in judging others. Often enough, people are loudest in judging others about words and actions that not infrequently should bother their own conscience first. And quite often too, many believe that the most important thing is to preserve and maintain the right to talk and, especially, the right, or even the duty, to talk back. If we do not watch out, all this, too, may prove a luxury we may not be permitted soon to afford. All we have to remember is the lot Czechoslovakia and the rest of these nations supposedly liberated by new masters from the East.

I think we need to modify our orientation. We cannot do without talk. Yes, it is an attribute of organized, civilized existence. Our Constitution guarantees it under certain conditions. What we might ask is that we talk because we are honestly seeking light and may be able to give some light ourselves. This calls for some humility, some forbearance, some charity. But when we talk immediately with a chip on our shoulders, we invite hostilities cold or hot right away, and we blast the prospects of understanding and cooperation before they are even started.

I want to make special reference to our national security, our foreign relations, and our economic development. I am urging all elements of our people to get together and pull together on these all-important subjects. We cannot afford to be divided by mere partisan feeling or by the venom of ill-wishing which is now poisoning the mind of a great many of our well-meaning citizenry. Our instinct as a nation should be our simple guide to the stark realities of our national position.

We cannot wish away the growing truculence of the situation just beyond our borders—not to mention the major conflicts looming much more beyond. Communism's victory in China is a fact of history the effects of which

are being increasingly felt in our midst. Faced with this stubborn fact, we must put our heads together or get them snatched separately. It would be scant pleasure to any inveterate, self-satisfied critic of this administration if, some day, the flood should engulf us all without our having had any opportunity to unite our hearts and raise our defenses. Under such a predicament we should fear not so much the abuse of power by the constitutional representatives of our countrymen, but the exercise of power by a foreign invader or its agents at home. Because if we should ever have to fight again, it would be not to save any administration but to defend the way of life that we cherish and save the Republic.

It has been four years since we joined the free nations of the world. We can be proud of the record we have so far made whatever our handicaps. But we have to exert ourselves more to sustain and raise our prestige and preserve our institutions. We must be able to present a moral solidarity that can increasingly strengthen our position as a factor for world peace and cooperation. Our domestic differences which may be inevitable in a democratic system should not weaken but fortify the stand we make in our foreign relations where it is to help support freedom and order and justice, especially for small peoples in their continuing struggle for broader participation in the enjoyment of those national attributes.

Today, we share with many peoples of our part of the world, the problem of providing the lasting answer to organized unrest, chaos and fear—and that is the increasing liberation of our masses from economic deprivation. We are committed to developing such material resources as God has generously provided our country. We have evolved a program of development to this end. There is no surefire technique of doing this. We must reckon with the limitations of nature and human nature. What we have at our disposal and what we can do must be coordinated and integrated. Mistakes may be committed and must be corrected. But here again we should pull together and spend less time in pulling each other down. Without slackening in our decided efforts to establish a new national integrity, we should have more patience with each other and be willing to allow others the virtues that we would limit to our own selves.

Now, it is hardly necessary to remind you that a conference is soon to be held in Baguio, and the eyes of the world will be upon us. This will be a historic meeting. For the first time the peoples of Southeast Asia and the Southwest Pacific will seek common counsel on ways of cooperation to enhance the political, economic and cultural welfare of each other. The mere fact that they have

agreed to meet is a decided gain and advance towards the objectives visualized under the United Nations.

As host nation to this epoch-making meeting, we should stand to derive a good deal of good from it. It gives us an opportunity to prove something of our well-known hospitality and should deepen our appreciation of the fact that we are an intimate part of a bigger community. It gives us an opportunity to show the quality of our national discipline as something worthy of the respect of our neighbors. It gives us an opportunity to learn of the problems of these neighbors that should be helpful in pooling our efforts to advance and maintain neighborly cooperation, and to facilitate our own material development as adequate answer to the appeal and resort to violence, hate and confusion at home and abroad.

And above the possible clashes of mere personalities at home, we should be able to rise and view our common problems in better perspective. In the period of peril, men have been known to forget purely personal and partisan interest to subserve the well-being of all. We are good Filipinos all and are not any less capable of self-effacement and personal sacrifice in the urgent hour of national responsibility and duty.

The difficulties incident to nature and human competition will always be with us. But they are not insurmountable, they are not insuperable. Under critical stresses, they have been overcome and they can be overcome again, and yet again, if there is enough will and goodwill among ourselves and among our neighbors.

President Quirino's message on U. S. Armed Forces Day, May 19, 1950:

I am happy to join in warmest felicitations to the American soldier on U. S. Armed Forces Day. His valor and gallantry in defending his country and what it stands for in freedom, justice, and peace at home and abroad have always been in the best tradition. It is obvious that he cannot sit on his laurels. He will continue to be called upon to defend it and its ideals against a dire threat which can extinguished all freedom and human dignity in all the world. His cause is ours, as it is of all mankind, and our greatest tribute lies in our own continued vigilance against the menace that can destroy our free institutions and way of life.

Statement on the eve of the Baguio Conference of 1950 by Carlos P. Romulo, Secretary of Foreign Affairs, over station DZFM, 8 P.M., May 25, 1950:

On the eve of the Baguio Conference of 1950, I am happy to be able to report to our people that all necessary

preparations have been complete. Under the President's direction, everything has been done to facilitate the work of the conference.

It has not been an easy task to bring together the participating nations in Baguio city at this particular time. The implementations of the President's decision to convene the conference required nearly ten months of intensive work. The whole world, as we all know, is confused by profound and revolutionary changes. Nowhere have these changes taken place at such a rapid pace and over such an extensive area as in Southeast Asia and the Western Pacific. The agitation and upheavals caused by these changes enhanced the urgency and importance, but at the same time increased the difficulty, of our work. We had to temper our zeal with patience.

During the period in which I was engaged in the diplomatic sounding entrusted to me by the President, there was a change of government in several of the countries that we desired to invite. Power changed hands with all the attendant uncertainty, and the outlook for peace in the world as a whole was further beckoned by the failure of the powers concerned to come to agreement on long standing disputes. As a consequence, the obstacles we had to overcome multiplied. Only by the sustained exertion of extraordinary efforts shall we be able to achieve our goal.

I take the opportunity to reiterate my appreciation and gratitude for the guidance of the President, the assistance of the Congress, the cooperation of the leaders of the opposition party on a bi-partisan basis, and the united support of our people without which this difficult mission could not have been accomplished.

Seven states are taking part in the conference: Australia, Ceylon, India, Indonesia, Pakistan, Thailand and the Philippines. Together they represent more than six hundred million people, speaking many languages and representing different races, religions and cultures. They constitute a large segment of mankind. Their territories comprise important areas in Southeast Asia and the Western Pacific. They produce materials and commodities which are essential to the economic well-being of other countries and other regions of the globe. Their problems therefore are of vital concern to the whole world, and the fact that they are seeking means to solve these problems by common counsel and amicable cooperation is a cause for hope and encouragement to all who put their trust in peace and the methods of peace.

In the Baguio Conference of 1950, the free states of Southeast Asia and the Western Pacific will consult together on their common economic, political and cultural problems

for the first time on a governmental level. The Asian relations conference held in New Delhi in 1947 explored and deliberated upon a wide variety of problems in which the peoples of Asia have a common interest, but the delegations that took part in the conference did not represent governments. The New Delhi conference on Indonesia held last year was conducted on a governmental level, but it dealt only with the Indonesian problem. Now for the first time, other matters of mutual and permanent interest to the peoples of Southeast Asia and the Western Pacific will be discussed and acted upon, and the decisions taken will be binding on the governments participating in the conference.

The Baguio Conference, therefore, is a step forward in the movement of Asian nations towards regional association and regional action within the United Nations. This movement is fully in accord with the purposes and principles of the Charter, and its aims are identical with the prime objectives of the United Nations; namely, to promote peace, social progress and better standard of life in larger freedom.

The Baguio Conference as the President and I have repeatedly emphasized, is non-military in character. It has no aggressive aims. It is not directed against any nation or group of nations. No military comments are contemplated. No hostile act or declaration is planned against anybody. The conference will devote its deliberations solely to the search for effective and peaceful modes of cooperation designed to safeguard the freedom and promote the legitimate economic, political and cultural interest of the participating states.

This task is too big for any single nation to accomplish by itself. The need for consultation, understanding, joint planning and joint action by the countries concerned is imperative.

There is not much time to lose. Both in the political and in the economic fields urgent measures are called for. The realities that confront us demand that we consider practical means that can be applied without too much delay in addition to the long range programs that we are seeking to evolve.

The quality of the representation of the states participating in the Baguio Conference is an indication of the importance which they attach to it. The distinguished delegates who are assembled here are men of high prestige and wide experience in international affairs. Dr. Soebardjo, the Chairman of the Indonesian delegation, was the first foreign and now one of the chief advisers of Premier and concurrently Foreign Minister Mohammad Hatta. Sir Ramaswami Mudaliar, the head of the Indonesian delega-

tions is a former president of the United Nations Economic and Social Council. The other chief delegates are also veterans of international conferences.

In the statement to the press the other day, I pointed out that if the Baguio Conference accomplished nothing more than to bring about an exchange of views among the nations represented, it would still have achieved a measure of success. For hundreds of years the peoples of Asia were isolated from one another, with the result that they were entranged and divided among themselves. Now that they are free they can meet as equals and understand one another better.

This in itself is important and a matter for deep gratification. It is our hope, however, that the conference shall be productive of more substantial results.

We know the magnitude of the difficulties and the gravity of the danger that beset us here in Asia. But we do not despair. We take heart from the knowledge that we have accomplished tasks and overcome perils equally great in the past. We have the material resources and even more important the moral resources to meet the challenge of the present and bring to fulfillment the promise of the future.

We are often told that if another world war should engulf the earth, it might possibly start in Asia. It is pointed out that there is not one nation represented in this conference which is not faced with critical problems at home as well as in its relations with the rest of the world. Some of us who have recently won our freedom find ourselves called upon not only to build new states out of the ruin left by the war but also to undo the evil consequences bequeathed to us by past systems. All of us are confronted by the growing threat of militant influence that seek to disrupt rather than promote unity and understanding among nations, and to create chaos in lieu of order and law. There is acute danger also in the unwise deferment of the independence of nations which are still under colonial rule. These nations are compelled to seek by violent mean the freedom to which they are by right entitled and which should in justice be granted to them voluntarily, in a spirit of amity and goodwill.

These are facts which must be admitted and faced squarely. But to those who say it is possible that war may start in Asia, I would reply that it is equally true that peace-lasting and equitable peace that mankind desires and seeks could start in Asia. Here, where the danger is great, the opportunity to avert and overcome it is correspondingly great.

The Baguio Conference is part of our collective effort to swing the balance on the side of peace. We have gathered

here to assert Asia's desire for peace and to translate that desire into practical modes of mutual cooperation for mutual benefit. We intend not only to profess but to practice peace.

We rely not only on material power but on moral strength. In the world as it is, we cannot discount the importance of material power. On the other hand, we should not underestimate the effect of moral influence. Who can say that Asia's desires for peace will not radiate past the confines of these regions gaining strength as it sweeps, touch off an irresistible chain reaction for peace among other peoples in other lands? It is our task in the Baguio Conference of 1950 to give impetus and direction to Asia's yearning for peace in the hope that it may ultimately be shared and translated into reality by all the nations of the world.

Address of President Elpidio Quirino at the opening session of the Baguio Conference of 1950, Mansion House, Baguio, May 26, 1950:

Dear Friends:

This first meeting of representatives of friendly sovereign and neighbor States is indeed inspiring. It is most reassuring to the peoples of Southeast Asia and the Western Pacific. I share the distinction which the gentlemen of the conference confer upon the Filipino people by their happy agreement to come here for mutual counsel on the solution of our common problems. I can not but take this meeting as a positive affirmation of our common problems. I can not but take this meeting as a positive affirmation of faith in ourselves and in one another.

Until the recent past most of us could not chart our own course and had to depend on alien guidance. Our loyalties were divided; we could not develop our own initiative; we could not determine our growth as separate nations. Now that we are masters of our own destiny, and as we endeavor to pursue our systematic growth and development consistent each with our national genius, we believe that we can complement one another relying on our common historic origin and traditional sympathy with each other as well as on our geographic propinquity, to better promote our common interests by frank mutual consultations.

This is a historic moment for all of us. A conference such as this has long been overdue. Its purposes have been laid down in the broadest possible terms. It was our desires that we come together with open minds and enjoy in the course of the deliberations complete freedom of action.

Accordingly, this conference remains the master of its own agenda and it shall, by common consent, agree to discuss or not to discuss any subject-matter which is germane to the broad objectives for which this meeting has been convened.

However, it surely is not a violation of this idea of freedom of action to accept certain principles underlying the calling of this conference. We are agreed, I believe, that we are gathered here in our common interest and not against anybody. I might add to meet for positive and not negative action, much less for aggression. Our symbol is the dove of peace. The world as it is is so full of enmity and distrust, shot through and through with conspiracy and tension that we cannot possibly wish to add to the confusion and fear which prevail in the international sphere. I like to believe also that, desiring peace as deeply as we do, we should rather attempt to mitigate the rigors of the political struggle and allay the anxiety which all men feel in the face of the terrible menace which overhangs the world.

We have been careful to emphasize that the conference would do well to limit itself to the uncovering of the areas of common interest among the participating States. Let us fix firmly in our minds what we wish to do in cooperation with one another, and then, let us begin earnestly to find out how best we can do it and to what extent we are ready and willing to lend our cooperation to the common task.

One may perhaps describe our initial task as that mutual discovery, of getting our bearings individually and in relation to others. The freedom which our countries have achieved will mean little until we have harnessed that freedom to the welfare of our respective peoples and used it as an instrument for knowing each other better and working more effectively together for our mutual benefit. We are certain to discover that there are many areas in the economic, political and cultural fields wherein we could bring our purposes into better harmony, and mesh our efforts with those of our neighbors in the interest of a fuller life in larger freedom for all our peoples.

The problems of our region have both a national and an international aspect. Every state here represented retains unimpaired the right to meet and solve those problems by national action according to the peculiar conditions prevailing within its territory. Any proposal for common action, therefore, must be regarded not as a substitute for national action but rather as supplementary to it. I dare that there is not one among us who would deny that any of those problems, whether of a political, economic, or cultural character, would be rendered more difficult by a pro-

gram of international action. On the contrary, the national sinews will be strengthened by international and direct cooperation.

Various United Nations bodies have done much useful work in showing us where such cooperation could most fruitfully be pursued. In particular, the Economic Commission for Asia and the Far East has made various recommendations to most of the countries here represented whereby our national economies and the living standards of our peoples may be raised. This conference may well address itself to the implementation of these recommendations.

Problems connected with the United Nations program of technical assistance to under-developed countries and with the United States program under Point Four, with decisions announced from the recent London conference as well as with plans that may have been evolved in the recent Bangkok and Sydney conferences, will probably arise in the course of your deliberations. I hope that you will find the means of harnessing these programs and decisions speedily and effectively to the needs of our peoples.

We shall not duplicate here the work of the United Nations or any United Nations agency or any bloc of free member nations committed to a concrete program of mutual or self-help. It is our desires rather to supplement their labors and to implement such recommendations emanating from them as will seem necessary to our well-being and prosperity. The Charter of the United Nations clearly recognizes the value of regional action in certain fields, and it will be our constant endeavor to carry on our work in strict conformity with the purposes and principles of the United Nations.

We have the opportunity to contribute as a bigger unit to world advancement, to world peace. Hitherto we have been drawn into conflicts not necessarily of our own choice.

We now want to leave the epoch of destruction behind and to have all the time to rebuild and build. It is within us to profit from our common knowledge and experience, to pool our vision and genius and make of our part of the world a new source of world contentment founded on freedom, peace and prosperity. It is within us to banish doubt and fear and to work out a constructive era of economic stability to raise our peoples' living standards and give them increasing latitude to realize their potentialities. We must rise in strength and dignity.

We do not propose to fulfill all this with one conference or even with many conferences. But we can initiate the work and create a sense of momentum essential to remove confusion and generate confidence in our resources to help

ourselves. We can agree to a concrete basis of regional collaboration definitely providing the working machinery for advancing our political, economic and cultural welfare, which we can in common support and improve. We can perfect such a machinery where it positively sustains the deepening of regional understanding and strengthens world security. We shall have discharged a vital part of our responsibility to this generation and to our posterity if we now take the step, hitherto regarded impossible, to clear much of the road towards common cooperation and action for a world we want to be free and stay free.

Gentlemen of the Conference: it is a deeply moving experience for me to welcome you to this meeting in Baguio. You are gathered here at a crucial moment of history and your responsibility is great. I am under no illusion—I think none of us are under any illusion—that this conference will result in any miracles of achievement. The problems that confront us are much too grave and numerous to yield to a quick solution by magic or incantation. But I am sure that out of the meeting of our minds in this conference light shall come to illumine the path that we must follow. That the task is arduous no one doubts. But the stake is great—it is none other than the maintenance of the freedom and security of our peoples in a darkened world—and it is worthy of our greatest sacrifices.

My friends, you hold the key to a new day and you will usher to our respective peoples its manifold benedictions.

DECISIONS OF THE SUPREME COURT

[No. 49155. Diciembre 14, 1948]

JUAN CASTRO, demandante y apelado, *contra* ACRO TAXICAB CO., demandada y apelante

1. CONTRATOS; NEGLIGENCIA; CULPA CONTRACTUAL Y CULPA AQUILIANA, DISTINGUIDA.—La culpa aquiliana determina y engendra la responsabilidad, y por eso es *sustantiva, independiente;* mientras que la culpa contractual presupone la preexistencia de una obligación, por tanto es sólo *incidental*—es decir, la infracción o incumplimiento de esa obligación es lo que genera la culpa contractual. Una implicación o consecuencia característica de la diferencia entre ambos conceptos jurídicos es que, tratándose de la culpa extracontractual o aquiliana, el demandante que reclame indemnización de daños y perjuicios tiene que probar, como requisito indispensable para que prospere su acción, la culpa o negligencia del demandado, mientras que, tratándose de la culpa contractual, es bastante que se pruebe la existencia del contrato y que la obligación resultante del mismo se ha infringido o no se ha cumplido, siguiéndose daños de esta infracción e incumplimiento.
2. APELACIÓN; APRECIACIONES Y CONCLUSIONES DE HECHO POR EL JUZGADO "A QUO."—Dentro del marco de nuestra jurisdicción en alzada, tal como lo define la ley, no estamos autorizados para abrogar o alterar estas apreciaciones y conclusiones de hecho establecidas tanto por el Juzgado de Primera Instancia como por el Tribunal de Apelación: tenemos que darlas por buenas y resolver solamente cualquier cuestión de derecho suscitada sobre las mismas.
3. PRINCIPAL Y EMPLEADO; CULPA AQUILIANA; NEGLIGENCIA.—De la culpa imputable al dependiente de un establecimiento o empresa, al ocurrir el acto u omisión negligente, nace simultáneamente la presunción de negligencia de parte de los dueños o directores, si bien esa presunción es sólo *juris tantum* y puede ser enervada por la prueba de que éstos ejercitaron el cuidado y diligencia de un buen padre de familia no sólo en la selección del dependiente sino también en la dirección, supervisión y vigilencia de su conducta y de sus actos. Establecida suficientemente esta prueba, los dueños y directores de la empresa quedan exentos de responsabilidad por los daños causados.
4. ID.; CULPA CONTRACTUAL; NEGLIGENCIA.—Con respecto a la culpa o negligencia contractual (artículos 1.101, 1.103 y 1.104 del Código Civil), la regla es completamente diferente. Ambas responsabilidades—la del dependiente y la del amo—son *solidarias,* se confunden en una sola. Así que el patrono no puede exculparse alegando que ejercitó el cuidado y diligencia de un buen padre de familia tanto en la selección del dependiente como en la dirección o inspección de sus actos.
5. DAÑOS Y PERJUICIOS; INDEMNIZACIÓN POR EL DOLOR Y LOS SUFRIMIENTOS.—Se reafirma la doctrina sentada en el asunto de Lilius (59 Jur. Fil., 800), en el sentido de que cabe indemnizar por daños morales y patrimoniales, incluyéndose en éstos el dolor y sufrimiento físico. Con ésto efectuamos en esta jurisdicción una verdadera simbiosis del derecho hispano y derecho americano, y nos ponemos, además, justamente a tono con el espíritu y la marcha progresiva de los tiempos.

6. ID.; ID.—No introducimos ninguna reforma en el Código Civil; todo lo que hacemos es ampliar la interpretación del concepto jurídico del daño, incluyendo en el mismo al daño moral y el dolor o sufrimiento físico; pero todo dentro del código. La famosa sentencia de 1912 del Tribunal Supremo de España de que habla el Sr. Castan no sólo no extravasa los confines del código civil, sino que va a las raíces del mismo, "invocando precedentes del derecho patrio—ley 21, tít. IX, Partida VII," según palabras mismas del insigne tratadista.

Per PERFECTO, *J.*, concurring:

7. THE BAHIA DOCTRINE.—The diligence of the owner of a taxicab in the selection of his chauffeur cannot exempt him from responsibility for the damages caused by the latter, the doctrine in Bahia *vs.* Litonjua (30 Phil., 624) being illegal, wrong and unjust.
8. ONE-SIDED LEGAL PHILOSOPHY.—The doctrine in the Bahia case is based on a philosophy intended to serve the unilateral interest of capitalists. It offers a shield of irresponsibility to the owner of public services and other enterprises dealing with the public in general, in utter discrimination against the defenseless public. There is no single word in the law on which the doctrine may stand.
9. THE WORD "DAMAGE" IN ARTICLES 1902 AND 1903 OF THE CIVIL CODE.—The word "damage" in these articles comprehends all that are embraced in its meaning. It includes any and all damages that human being may suffer in any and all manifestations of his life: physical or material, moral or psychological, mental or spiritual, financial, economic, social, political, religious.
10. PAINS ARE DAMAGES IN THE CONTEMPLATION OF THE LAW.—The pains suffered by the victim of an accident constitute the largest and more important item of his damages. They entail the loss of positive economic values. The shock resulting from the fracture of five ribs will remain forever in his memory as a sad experience and will leave in his organism a permanent scar or internal deformity.
11. LOSS OF PERSONAL FREEDOM.—The loss of personal freedom resulting from hospitalization and compulsory confinement at home for the duration of medical treatment is loss of a thing of unquestionable economic value. Every individual would be willing to give a price to avoid losing that freedom.
12. LEGAL OPINION IN CIVILIZED COUNTRIES.—Physical pain and injured feelings are among the damages recognized in the most civilized countries of the world, United States of America, England, France, Germany, Italy, Austria and Switzerland.
13. THE MARCELO CASE.—The decision of the pre-Commonwealth Supreme Court in Marcelo *vs.* Velasco (11 Phil., 287) is based on a judgment rendered by the Supreme Court of Spain on December 6, 1882, which the same Court has already abandoned.
14. WRONG DOXASTIC PROCESS.—The pre-Commonwealth Supreme Court in laying down the doctrine in the Marcelo case had followed, by wrong doxastic process, the traditional procedure of deciding litigations by looking for precedents first and reading the law as a last resort, when the logical procedure should be the reverse, law first and precedents after. Paying latreutic worship to precedents is a sure way to miscarriage of justice.
15. FLAWS AND WEAKNESSES OF THE MARCELO DOCTRINE.—The Marcelo doctrine even tested under the authority of the Spanish

Supreme Court decision of December 6, 1882, and of Viada, appears full of flaws and weaknesses.

16. THE 19TH CENTURY SPANISH DOCTRINE UNREALISTIC.—The 1882 judgment of the Spanish Supreme Court is based on a premise which is unrealistic. It asserts an absolute, which is incompatible with the relativities of human nature. It is based on a failure to grasp the idea that a court of justice may make an appraisal of the minimum value of physical and moral pains. The doctrine has been abandoned by the same Spanish Supreme Court since December 6, 1912.

17. AN OBSOLETE DOCTRINE IN THE ATOMIC ERA.—Our Supreme Court has no reason to stick to the 19th century doctrine of the Spanish Supreme Court which the same has relegated as outworn in the century of fuller enlightenment. It would be anachronistic for our Supreme Court to persist holding it in this Atomic era, when human mind has undergone a wonderful awakening and reason has conquered new ever widening fields of the spirit.

18. MR. JUSTICE MALCOLM.—In his concurring opinion in Manzanares *vs.* Moreta (38 Phil., 821), Mr. Justice Malcolm has paved the way since 1918 for the revision of the doctrine in the Marcelo case.

SOLICITUD de revisión mediante *certiorari.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Delgado y Dizon (Delgado y Flores) en representación de la apelante.

D. Salvador E. Imperial y *D. Amador Constantino* en representación del apelado.

BRIONES, *M.:*

Esta es una apelación, por vía de *certiorari,* en que se pide que revisemos la sentencia del Tribunal de Apelación condenando a la demandada y apelante Acro Taxicab Co., Inc., a pagar al demandante y apelado Juan Castro la suma de ₱4,000—₱1,000, por gastos de tratamiento facultativo; y ₱3,000, como una "adecuada compensación por los sufrimientos y por la incapacidad para trabajar durante el tiempo en que él (el demandante) había estado actualmente incapacitado para realizar el trabajo previamente desempeñado por el mismo." La sentencia del Tribunal de Apelación confirma sustancialmente la del Juzgado de Primera Instancia de Manila, reduciendo sólo la indemnización de ₱6,000 a ₱4,000.

Para una acabada comprensión de los hechos esenciales del caso, reproducimos a continuación toda la sentencia del Tribunal de Apelación, a saber:

"Defendant, a domestic corporation, appeals from a judgment directing it to pay the sum of ₱6,000 as damages, with interest at 6 per cent from the filing of the complaint until paid, and costs.

"It appears that on July 14, 1939, about 4 a.m., after taking a cup of coffee at the Central Hotel, Juan Castro boarded taxicab No. 962, a car for hire owned by appellant corporation and driven by Sancho Ruedas, to go home. The cab proceeded northward on Rizal Avenue and before reaching Calle Lope de Vega, the passenger told

the driver to turn to the right or east of Calle Zurbaran, the next cross street. Ruedas drove the cab so fast that when he had to turn it to the right or east of Calle Zurbaran, it collided with another taxicab No. 936 owned by the same corporation coming from the north. Both cars were heavily damaged, and the first hit the fire hydrant that was on the sidewalk, east of Rizal Avenue and southeast of Calle Zurbaran. Without losing time Castro boarded another car and directed the driver to take him to the Philippine General Hospital, and upon reaching Calle Carriedo in front of Tom's Dixie, he ordered the driver to stop and requested patrolman Jose Lomboy to accompany him to the hospital. Upon arriving there, Dr. Eriberto Aguilar asked him to undress, looked over his body, applied ointment to aching parts, and told him to return home. The following day, as he was still suffering from acute pains on the left side of the chest, difficult breathing, fever, and coughs, he called Dr. Herrera who prescribed some palliative medicines, and on the 17th, Dr. Herrera advised him to go to a hospital because it was a case for a surgeon. On July 18, he entered St. Luke's Hospital and was treated there by Dr. Fores who advised him to have an X-ray taken. Dr. Paulino J. Garcia took an X-ray picture (Exhibits A–1 and A–2) and this revealed that five left ribs were fractured. After three days stay in the hospital he was advised to go home because the hospital charges were rather heavy, and was told by Dr. Fores that he would continue treating him at the house (pp. 23–25, t.s.n., July 15, 1940). Twice a week for two consecutive weeks and once in the third week after his discharge from the hospital (p. 48, t.s.n., Sept. 3, 1940), or three or four times, he was visited in his house and treated by Dr. Fores (p. 19, t.s.n., July 15), and after one month he was told to report to the surgeon once every two weeks (p. 20, t.s.n., July 15), and reported twice (p. 48, t.s.n., Sept. 3). The honorarium of Dr. Herrera is ₱100; of Dr. Fores, ₱150; and the hospital bill was ₱40. Castro testifies that prior to the accident he was sort of a utility man of Eleuterio Navoa, and for that work he was paid a salary of ₱250 a month (p. 6, t.s.n., Sept. 4), but he could no longer work after the accident, he lost his job.

"The first point to decide is whether the chauffeur of the taxicab, owned and operated for hire by appellant, had been imprudent in driving the car before and when he turned it to the right or east of Calle Zurbaran, for if he had been, the fact that the driver of the second car that collided with the first had also been reckless would be immaterial and would not affect appellant's obligation arising from the imprudent or reckless act of its servant. If, on the other hand, only the driver of the second car had been imprudent, appellant would not be relieved just the same from its liability arising from the reckless act, as correctly held by the trial court. The determination of the accident's cause is only necessary to ascertain and fix the source of appellant's liability. If the cause of the accident was the imprudent act of the first car's driver, then appellant's obligation would be contractual. If it was the recklessness on the second car's driver, then its liability would arise from tort or *culpa aquiliana*. A review of the evidence discloses that the driver of the first car ran his car at an immoderate speed, so much so that instead of passing the lamp post in the middle of the avenue and cross street to turn to the right or east of Calle Zurbaran, as required by law and ordinance, he did not pass it, an act which indicates clearly that because of the speed he was going he could not pass it but turned his car to the right passing on the south of the post, and after turning it in that way, the two cars collided at a point on the east of Rizal Avenue and on the south of Calle Zurbaran. The point where the collision took place must be the one indicated by appellee (Exhibit 1; p. 11, t.s.n., Sept.

4), because the fire hydrant located at the curve on the east of Rizal Avenue and southeast of Calle Zurbaran was hit by the first car and damaged as a result thereof. For this damage appellant and its driver undertook to pay, as they did pay, the Metropolitan Water District (Exhibits E, F, G, H; pp. 54–59, 77, t.s.n., Sept. 3).

"The other point to determine is the amount of damages. The evidence shows that appellee has to pay for the X-ray picture (p. 15, t.s.n., Sept. 4); Dr. Herrera, ₱100 (p. 10, t.s.n., July 15); Dr. Fores, ₱150 (p. 21, t.s.n., July 15; p. 49, t.s.n., Sept. 3); and had paid the hospital ₱40 (p. 15, t.s.n., Sept. 4). It is not clear as to other expenses, such as the amount spent for medicines prescribed for and applied to appellee (p. 8, t.s.n., Sept. 4). Nevertheless, ₱1,000 for all fees and expenses would still be reasonable. On the other hand, the award of ₱5,000 for injuries suffered is speculative. There is no sufficient evidence to support it. If it is true that he only stayed 3 days in the hospital and was treated in his house by Dr. Fores 3 or 4 times (p. 19, t.s.n., July 15; p. 48, t.s.n., Sept. 3), then he was not disabled for the rest of his life, as claimed by him, to perform his previous work which required no physical exertion, for it was most likely that the fracture of the ribs had been cured by ossification, this kind of fracture being curable from 4 to 8 weeks (pp. 22, 33, 43, t.s.n., July 15; p. 37, t.s.n., Sept. 4), as shown by the fact that appellee was stout and healthy when seen at the trial of this case (p. 38, t.s.n., Sept. 4). If this fact be accepted, as it must, then ₱5,000 as compensation for damages suffered by appellee is certainly excessive. According to appellee, his work before the accident was that of a utility man of Eleuterio Navoa; according to appellant's witnesses his work was that of a dealer in the game of cards conducted by his principal (pp. 30–31, 33, 34, t.s.n., Sept. 4). Whether it be the first or the second, certainly his work required no physical exertion and the ossification of the fractural ribs rendered him fit to perform again the work. On the whole, ₱3,000 would be an adequate compensation for pains and disability to work during the time he had been actually disabled to perform the work previously done by him.

"We modify the judgment appealed from and award appellee ₱4,000, together with lawful interests from the filing of the complaint until paid, and costs."

La primera cuestión que tenemos que determinar y resolver, dentro del marco de nuestra jurisdicción sobre asuntos que vienen en alzada del Tribunal de Apelación, es la que se refiere a la ley aplicable al caso. Resulta evidente, de los hechos expuestos, que las disposiciones legales aplicables son los artículos 1.101, 1.103 y 1.104 del Código Civil, cuyo texto es como sigue:

"ART. 1.101. Quedan sujetos a la indemnización de los daños y perjuicios causados los que en el cumplimiento de sus obligaciones incurrieren en dolo, negligencia o morosidad, y los de cualquier modo contravinieren al tenor de aquéllas."

"ART. 1.103. La responsabilidad que proceda de negligencia es igualmente exigible en el cumplimiento de toda clase de obligaciones; pero podrá moderarse por los Tribunales según los casos."

"ART. 1.104. La culpa o negligencia del deudor consiste en la omisión de aquella diligencia que exija la naturaleza de la obligación y corresponda a las circunstancias de las personas, del tiempo y del lugar.

"Cuando la obligación no exprese la diligencia que ha de prestarse en su cumplimiento, se exigirá la que correspondería a un buen padre de familia."

En los alegatos de ambas partes se debate hasta cierto punto el alcance de los artículos 1.902 y 1.903 del mismo Código, pero es evidente que éstos no son los pertinentes. En el caso que nos ocupa la culpa o negligencia de que se trata es la llamada técnicamente culpa contractual y es objeto de los artículos primeramente citados, mientras que los últimos se refieren a la denominada *culpa extracontractual* o *culpa aquiliana* del derecho romano. Ambos conceptos tienen, sin embargo, un común denominador negativo y es la falta de *intención dañada:* si esta existiera, entonces ya no sería sólo *culpa* sino que sería *delito* o, por lo menos *dolo,* y las disposiciones aplicables serían entonces diferentes; tratándose de dolo, por ejemplo, el artículo aplicable sería el 1.102, y tratándose de delito el artículo 1.092.

Es importante y útil recalcar la diferencia entre culpa contractual y culpa aquiliana porque ambos conceptos jurídicos originan algunas implicaciones y consecuencias diferentes. La culpa aquiliana determina y engendra la responsabilidad, y por eso es *sustantiva, independiente;* mientras que la culpa contractual presupone la preexistencia de una obligación, por tanto es sólo *incidental*—es decir, la infracción o incumplimiento de esa obligación es lo que genera la culpa contractual.

Una implicación o consecuencia característica de la diferencia entre ambos conceptos jurídicos es que, tratándose de la culpa extracontractual o aquiliana, el demandante que reclame indemnización de daños y perjuicios tiene que probar, como requisito indispensable para que prospere su acción, la culpa o negligencia del demandado, mientras que, tratándose de la culpa contractual, es bastante que se pruebe la existencia del contrato y que la obligación resultante del mismo se ha infringido o no se ha cumplido, siguiéndose daños de esta infracción e incumplimiento. Esta Corte Suprema, bajo la ponencia del Magistrado Sr. Fisher en el asunto autoritativo de Cangco *contra* Manila Railroad Co. (1918), sentó la doctrina, con el siguiente pronunciamiento:

"La situación de una persona natural o jurídica que, por contrato, se ha obligado a alguna prestación a favor de otra, es completamente distinta de la situación a que se contrae el artículo 1903. Cuando la fuente de la obligación en que se funda la acción del demandante es un acto u omisión negligente, al demandante incumbe acreditar la existencia de la negligencia—no prosperará su acción sino lo hace. Pero, cuando los hechos alegados demuestren la existencia de un contrato en virtud del cual el demandado se ha obligado a una prestación cualquiera a favor del demandante, y se alegue que éste ha omitido o se ha negado a cumplir su contrato, no es necesario que el demandante especifique en su demanda que el incumplimiento del contrato se debió a intención dolosa, o a mera negligencia por parte del demandado, o de sus empleados, dependientes o mandatarios. La prueba de la existencia del contrato y la de su incumplimiento son *prima facie* suficientes para que sea procedente que se dicte sentencia de acuerdo con lo pedido." (Cangco *contra* Manila Railroad Co. 38 Jur. Fil., p. 825.)

Apliquemos ahora la doctrina al caso que tenemos ante Nos. Cuando el demandante y apelado, Juan Castro, tomó el taxímetro No. 962 de la compañía demandada y apelante para que le condujera a cierto punto de Manila, se perfeccionó entre ambas partes un contrato de transporte o pasaje en virtud del cual la demandada se obligaba a transportar al pasajero sano y salvo al lugar de su destino, y el pasajero a pagar la cantidad fijada en la Tarifa. Pero al llegar el referido taxi a la esquina de la avenida de Rizal y de la calle de Zurbarán chocó con otro taxímetro de la demandada—el taxi No. 936—y de resultas del choque, el cual fué violentísimo, los dos automóviles se destrozaron casi por completo y el demandante salió contuso y lesionado, fracturándosele cinco costillas. Ese choque engendró jurídicamente una culpa contractual de parte de la demandada—consistiendo la culpa en el incumplimiento de la obligación de dicha demandada de transportar al demandante sano y salvo al punto de su destino. Y para que prosperase la acción del demandante pidiendo indemnización de daños y perjuicios bastaba que probase la existencia del contrato de paseje, esto es, que tomó el taxi para ser conducido, y el hecho del choque que causó lesiones y daños en el pasajero. De acuerdo con la doctrina enunciada, para el éxito de la acción de daños no era necesario que se probase la culpa, descuido o negligencia del chófer que guiaba el taxímetro No. 962. (Sin embargo, las pruebas obrantes en autos, tal como han sido apreciadas por el Juzgado de Primera Instancia y el Tribunal de Apelación, demuestran no sólo que fué descuidado y negligente el chófer del taxímetro No. 962, sino que lo fué también el del taxímetro No. 936 que venía del norte y que chocó contra aquél, corriendo a una tremenda velocidad; de modo que, en realidad, las exigencias del derecho y de la jurisprudencia están superadas en el presente caso).

Se preguntará: qué defensa podía interponer la demandada contra la acción del demandante? Aquélla podía defenderse alegando que se trata de un caso fortuito o fuerza mayor, pues, según el artículo 1.105 del Código Civil, "fuera de los casos expresamente mencionados en la ley, y de los en que así lo declare la obligación, nadie responde de aquellos que no hubieren podido preverse, o que, previstos, fueran inevitables." *Major casus est, cui humana infirmitas resistere non potest.* (Gajus, lib. 1.º, 4.0 D. de O. et A., 44., 7). De hecho, la demandada interpuso esta defensa, alegando y tratando de probar que cuando ocurrió el accidente—de 3 a 4 de la madrugada—estaba anunciado un tifón y que debido a las fuertes lluvias el piso era harto resbaladizo y sobre todo la visibilidad era muy pobre, por la obscuridad. Sin embargo, ni el Juzgado de Primera Instancia, ni el Tribunal de Apelación dieron

crédito a esta defensa. Los dos tribunales *a quo* han dado por establecidos y probados de una manera preponderante los siguientes hechos: (*a*) que si bien es cierto que se había anunciado un baguio, el mismo ya se había alejado de Filipinas, allá por Formosa, y ya no llovía o llovía muy poco cuando ocurrió el accidente; (*b*) que el accidente tuvo lugar por culpa o negligencia de los dos chofers de la demandada: del que guiaba el taxímetro No. 962 en donde estaba de pasajero el demandante, porque no sólo corría a una velocidad antirreglamentaria, sino que al llegar a la esquina de que se ha hecho mención, en vez de moderar la marcha y rebasar el poste eléctrico antes de torcer a la derecha, como estaba mandado por los reglamentos de tráfico, viró de repente, y en esto vino encima el taxímetro No. 936 de la misma compañía, causándose un choque tan violento que aquél, el taxímetro No. 962, fué arrojado contra un bocaincendios destrozándolo, y éste, o sea el taxímetro No. 936 arrojado a una larga distancia hacia el noroeste de la esquina, destruyéndose casi por completo ambos coches, como queda dicho más arriba; y la culpa o negligencia del chofer del taxímetro No. 962 consistió en correr demasiado, también a una velocidad ilegal y antirreglamentaria, como lo demuestra la fuerza tremenda del impacto.

Es obvio que dentro del marco de nuestra jurisdicción en alzada, tal como lo define la ley, no estamos autorizados para abrogar o alterar estas apreciaciones y conclusiones de hecho establecidas tanto por el Juzgado de Primera Instancia como por el Tribunal de Apelación: tenemos que darlas por buenas y resolver solamente cualquier cuestión de derecho suscitada sobre las mismas.

¿Puede alegarse como defensa el hecho de que la compañía demandada ejercitó el cuidado y diligencia de un buen padre de familia tanto en la selección de los chofers de que se trata como en la dirección y vigilancia de los mismos en el desempeño de su trabajo y sus deberes, y que por tanto, aún concediendo que los chofers fueron descuidados y negligentes, su negligencia fué enteramente *personal* y la compañía no responde de ella? La contestación tiene que ser negativa. Aquí otra vez se destaca otra diferencia esencial y característica entre la culpa extracontractual o aquiliana y la contractual.

Según el artículo 1902 del Código Civil, "el que por acción u omisión causa daño a otro, interviniendo culpa o negligencia, está obligado a reparar el daño causado." (Como ya hemos dicho, esta es la culpa extracontractual o aquiliana.) Y, según el artículo 1.903, la obligación que impone este artículo "es exigible no sólo por los actos u omisiones propios, sino por los de aquellas personas de quienes se debe responder," así que "el padre, y por muerte o incapacidad de éste, la madre, son respon-

sables de los perjuicios causados por los hijos menores de edad que viven en su compañía;" * * * y "lo son igualmente los dueños o directores de un establecimiento o empresa, respecto de los perjuicios causados por sus dependientes en el servicio de los ramos en que los tuvieran empleados o con ocasión de sus funciones." Se ha declarado que tratándose de este último caso, es decir, de la culpa imputable al dependiente de un establecimiento o empresa, al ocurrir el acto u omisión negligente nace simultáneamente la presunción de negligencia de parte de los dueños o directores, si bien esa presunción es sólo *juris tantum* y puede ser enervada por la prueba de que éstos ejercitaron el cuidado y diligencia de un buen padre de familia no sólo en la selección del dependiente sino también en la dirección, supervisión y vigilancia de su conducta y de sus actos. Establecida suficientemente esta prueba, los dueños y directores de la empresa quedan exentos de responsabilidad por los daños causados. En el asunto de Bahía *contra* Litonjua y Leynes (1915), que se decidió bajo el artículo 1903 del Código Civil, es decir, como un caso de culpa aquiliana, esta Corte hizo el siguiente pronunciamiento doctrinal:

"Según el artículo 1.903 del Código Civil cuando se ocasiona un daño por negligencia de un criado o dependiente, la ley presume que ha mediado negligencia por parte del amo o patrono, ya en la selección del criado o dependiente, ya en la forma de inspeccionar sus trabajos después de habérsele escogido, ya en ambas cosas.—Dicha presunción, (sin embargo), no es *juris et de jure,* sino *juris tantum;* y si el amo o patrono prueba a satisfacción del tribunal que, al escoger y vigilar al dependiente, ejercitó el cuidado y diligencia de un buen padre de familia, queda destruida la presunción y relevado aquél de toda responsabilidad.

'Esta doctrina hace descansar la responsabilidad del patrono, en último término en su *propia* negligencia y no en la del dependiente." * * * (Bahía *contra* Litonjua y Leynes, 30 Jur. Fil., 655, 658).

Tratándose, sin embargo, de la culpa o negligencia contractual (artículos 1.101, 1.103 y 1.104 del Código Civil), la regla es completamente diferente. Ambas responsabilidades—la del dependiente y la del amo—son *solidarias,* se confunden en una sola. Así que el patrono no puede exculparse alegando que ejercitó el cuidado y diligencia de un buen padre de familia tanto en la selección del dependiente como en la dirección e inspección de sus actos. Se explanó con claridad meridiana esta regla en el asunto de Cangco *contra* Manila Railroad, *supra,* a saber:

"La situación de una persona natural o jurídica que, por contrato, se ha obligado a alguna prestación a favor de otra, es completamente distinta de la situación a que se contrae el artículo 1903. Cuando la fuente de la obligación en que se funda la acción del demandante es un acto u omisión negligente, al demandante incumbe acreditar la existencia de la negligencia—no prosperará su acción si no lo hace. Pero, cuando los hechos alegados demuestren la existencia de un contrato en virtud del cual el

demandado se ha obligado a una prestación cualquiera a favor del demandante, y se alegue que éste ha omitido o se ha negado a cumplir su contrato, no es necesario que el demandante especifique en su demanda que el incumplimiento del contrato se debió a intención dolosa, o a mera negligencia por parte del demandado, o de sus empleados, dependientes o mandatarios. La prueba de la existencia del contrato y la de su incumplimiento son *prima facie* suficientes para que sea procedente que se dicte sentencia de acuerdo con lo pedido.

"Por regla general, * * * será lo lógico que, tratándose de culpa extracontractual, el acreedor que reclame tenga que probar la existencia de la misma, como único hecho en que su reclamación se basa; y, por el contrario, tratándose de culpa que supone la existencia de una obligación, el acreedor que demuestre existía esta última y reclame su cumplimiento, no estará obligado a probar la existencia de aquella." (Manresa, tomo 8, pág. 71 [Ed. de 1907, pág. 76].)

"No siendo necesario que el demandante demuestre, en una acción sobre infracción de contrato, que el cumplimiento era imputable a la negligencia del demandado o de sus dependientes, aun cuando ésta sea realmente la causa del incumplimiento, es, por consiguiente, obvio que, si el demandado prueba que la causa del incumplimiento del contrato fué la negligencia u omisión de su criado, dependiente o mandatario, esta prueba no constituirá una defensa contra la acción. Si la negligencia de los criados, dependientes o mandatarios pudiese invocarse como razón para liberar del cumplimiento de los contratos, se daría el resultado anómalo de que las personas que obran por medio de mandatarios, o dependientes o empleados, en el cumplimiento de sus contratos, estarían en mejor situación que los que obraran en persona. Si se entrega un reloj de valor a un relojero, quien se obliga, por contrato, a hacer reparaciones en el mismo, y el relojero, por un acto de negligencia personal, destruye el reloj, es indiscutiblemente responsable del daño causado. Sería, acaso, lógico librarle de la responsabilidad nacida del incumplimiento de su contrato, que llevaba implícita la obligación de prestar la diligencia debida en la conservación del reloj, si demostrase que la causa del daño había sido la negligencia de uno de sus *criados?* Si fuera aceptable tal teoría, las personas jurídicas gozarían de una inmunidad casi completa por los daños y perjuicios nacidos del incumplimiento de sus contratos, si la causa de tal incumplimiento fuese un acto u omisión negligente de parte de sus empleados, dependientes o criados, puesto que las personas jurídicas necesariamente tienen que obrar por medio de sus mandatarios y en la mayoría de los casos sería fácil probar que habían desplegado una diligencia razonable y ordinaria en la selección y dirección de tales mandatarios. Si se entregan valores a una corporación bancaria, como garantía pignoraticia, y tales valores se pierden por negligencia de alguno de los empleados del banco, acaso sería justo y razonable permitir que el banco quedara relevado de toda responsabilidad por su obligación contractual de devolver los valores al extinguirse la deuda para cuya garantía se pignoraron, mediante la prueba de haber ejercido diligencia en la elección y dirección del dependiente negligente?

"Esta distinción entre la culpa aquiliana, como fuente de una obligación, y la culpa contractual, como mero incidente del cumplimiento de un contrato, ha sido con frecuencia reconocida por el Tribunal Supremo de España. (Sentencia de 27 de junio de 1894; 20 de noviembre de 1896, y 13 de diciembre de 1896.) En la sentencia de 20 de noviembre de 1896 resultó que la acción del demandante nació *ex contractu*, pero que el demandado trató de aprovecharse, como defensa, de las disposiciones del artículo 1.902 del Código Civil.

El Tribunal Supremo de España desestimó la pretensión del demandado, diciendo:

"No se trata en estos asuntos de un daño causado, *sin obligación preexistente*, por culpa o negligencia, *que es a lo que se refiere el artículo 1902 del Código Civil*, invocado en los motivos 4 y 7, sino de los perjuicios causados por la resistencia a cumplir el demandado las obligaciones determinadas por los contratos y disposiciones legales quedan expuestos * * *." (Cangco *contra* Manila Railroad Co., 38 Jur. Fil., pp. 825, 826 y 827.)

La sentencia en el asunto de Yamada *contra* Manila Railroad Co. y Bachrach Garage & Taxicab Co. (33 Jur. Fil., 9, 24 de Diciembre, 1915) ha dado lugar a cierta confusión en la mente de algunos. También se trataba en aquel asunto de algunos pasajeros que habían tomado en alquiler un automóvil de Bachrach y que sufrieron un accidente debido al choque del coche con un tren. El caso se decidió como culpa extracontractual o aquiliana, pero esto no dice nada en contra de la regla enunciada. La explicación de esta aparente desviación es que las partes optaron por plantear el caso bajo los artículos 1.902 y 1.903 del Código Civil y no hubo objeción de parte de nadie. He aquí como lo explica esta Corte en el asunto varias veces citado de Cangco *contra* Manila Railroad, que es posterior (1918), a saber:

"Es por lo tanto evidente que, en su decisión en el asunto de Yamada, el Tribunal trató la acción del demandante como fundada en una obligación extracontractual, en lugar de considerarla como una acción nacida del contrato de transporte. Un examen de los escritos de las partes y de sus alegatos demuestra que las cuestiones de derecho se plantearon efectivamente bajo esta teoría. Desde el punto de vista de la demandada, el resultado práctico hubiera sido igual en todo caso. Las pruebas demuestran, sin dejar lugar ninguno a duda, que el conductor del autómovil de la sociedad demandada fué culpable de negligencia crasa, y que esta negligencia fué la causa inmediata de las lesiones sufridas por el demandante. También constaba positivamente que la sociedad demandada había sido culpable de negligencia por su omisión de adoptar las precauciones debidas en la dirección y *control* de los conductores de sus automóviles. La parte demandada era responsable, por lo tanto, de los daños y perjuicios sufridos por el demandante, ya se considerase el incumplimiento de su deber desde el punto de vista de la culpa aquiliana o de la culpa contractual. Como hace ver Manresa (tomo 8, págs. 29 y 69), ya ocurra la negligencia como incidente en el cumplimiento de un contrato, o sea, en sí misma, origen de una obligación extracontractual, son idénticos sus caractéres esenciales. Existe siempre un acto u omisión productor del daño causado, debido a descuido o falta de atención por parte del demandado. Por consiguiente, cuando el Tribunal declara que el demandado es responsable de los daños y perjuicios por haber dejado de ejercerlo en la elección (*culpa in eligiendo*) y dirección (*culpa in vigilando*) de sus criados, el resultado práctico es idéntico en uno y otro caso. Por consiguiente, resulta que no debe deducirse, porque el Tribunal haya declarado, en el asunto de Yamada, que la parte demandada era responsable de los daños y perjuicios inferidos por la negligencia de unos de sus empleados a una persona con la cual sostenía relaciones contractuales, y mencionó el hecho de que la parte demandada había sido negligente en la elección y

dirección de sus empleados, que hubiera declarado, si se hubiese planteado la cuestión, y la acción se hubiera basado estrictamente en la teoría de la infracción del contrato, que la parte demandada podía librarse de la responsabilidad nacida del incumplimiento del contrato, mediante la prueba de haber ejercido el debido cuidado en la elección y dirección del empleado." (Cangco *contra* Manila Railroad Co., 38 Jur. Fil. pp. 829 y 830.)

Aprovechamos esta oportunidad para reafirmar inequivocamente la regla sentada en el referido asunto de Cangco *contra* Manila Railroad, por encima de cualquier aparente desviación que pudiera dar lugar a confusión y perplejidad. Esa regla está apoyada en sentencias del Tribunal Supremo de España y en los más autorizados tratadistas de derecho civil.

La última cuestión que tenemos que determinar y resolver es la cuantía de la indemnización. En la sentencia del Tribunal de Apelación se adjudica al demandante la cantidad de ₱3,000 como "una adecuada compensación por los sufrimientos (*pains*) y por la incapacidad para trabajar durante el tiempo en que estuvo inhabilitado para desempeñar el trabajo que tenía anteriormente." Como se ve, no se fija separadamente la cantidad para compensar el dolor y los sufrimientos, ni la suma para indemnizar por la incapacidad temporal de trabajar. La pregunta en orden es ésta: ¿cabe, bajo el código civil, igual que bajo el derecho americano, indemnizar por el dolor y los sufrimientos?

Esta cuestión se planteó y resolvió frontalmente en el asunto de Marcelo *contra* Velasco, decidido en 1908 bajo la ponencia del Magistrado Mr. Willard, quien, como se sabe, había escrito unos apuntes sobre el código civil, y con la aprobación del Presidente Sr. Arellano y de los Magistrados Sres. Torres, Mapa y Carson. No hubo ninguna disidencia; el Magistrado Mr. Tracey no tomó parte. "El hecho—dijo entonces la Corte—de que en los Estados Unidos proceda la indemnización de daños y perjuicios en esta clase de casos por el *dolor* y el *sufrimiento* padecidos, no puede afectar a la resolución del caso de que se trata;" y concluye: "Declaramos, por tanto, que este motivo de recurso carece de fundamento, y que no cabe condena alguna de daños y perjuicios por el *dolor* y *sufrimiento* padecidos por la demandante en el momento o después del accidente." (Marcelo *contra* Velasco, 11 Jur. Fil., 299.) "No hemos encontrado nada—razona la Corte—ni en las sentencias del Tribunal Supremo de España, ni en ninguno de los Comentarios, que autorice una condena por este respecto" (*Supra*, p. 298).

Esta doctrina se reafirmó en el asunto de Algarra *contra* Sandejas (1914), bajo la ponencia del Magistrado Mr. Trent. Esta Corte dijo entonces lo siguiente:

"En los daños efectivos, según el sistema americano, están comprendidos la recompensa pecuniaria por sufrimientos y dolores ma

teriales, los daños morales y otros de igual índole. El artículo 1902, tal como fué interpretado por esta Corte en Marcelo *contra* Velasco (11 Jur. Fil., 295), no abarca tales daños. Prescindiendo de esta excepción, los daños y perjuicios efectivos en esta jurisdicción, en el sentido de que significan la compensación justa en orden a las perdidas sufridas, son casi sinónimas de los daños y perjuicios efectivos según el sistema americano." (Algarra *contra* Sandejas, 27 Jur. Fil., p. 320.);

y se adjudicaron daños al demandante tan sólo por los siguientes conceptos: "diez pesos por gastos de asistencia médica; cien pesos por los meses de su ausencia forzosa de su negocio; y doscientos cincuenta pesos por los daños y perjuicios irrogados al mismo en concepto de pérdida de las utilidades." Ninguna indemnización se adjudicó por *dolor y sufrimiento.*

En el asunto de Gutierrez *contra* Gutierrez, 56 Jur. Fil. 193, no se adjudicó ninguna indemnización por dolor y sufrimiento, sino "por los daños reales y el daño por la lesión a la pierna del demandante que le puede causar una cojera permanente."

Posteriormente, sin embargo, en el asunto de Lilius *contra* Manila Railroad Co., 59 Jur. Fil., 800, (1934) se inició una marcada desviación de la antigua doctrina concediéndose *daños patrimoniales y morales,* a saber: a la esposa de Lilius, 'por una gran cicatriz que desfiguró su hermoso rostro y por una fractura de la pierna derecha que le causó una deformidad permanente que le hacía muy difícil andar;" y a la hija de Lilius, "por profundas cicatrices que desfiguraron permanentemente su cara y por las fracturas de ambas piernas que le hacían difícil andar desembarazadamente, haciendo necesario un contínuo y sumo cuidado para mantener el equilibrio, y afectando éllo, además, muy desfavorablemente a sus posibilidades matrimoniales."

Esta evolución de nuestra jurisprudencia estaba perfectamente justificada, pues cuando se promulgó la sentencia en el asunto citado de Lilius ya no existía la falta de precedentes en la jurisprudencia española que motivó la doctrina en el asunto de Marcelo *contra* Velasco, *supra,* y en otros posteriores del mismo tipo. Efectivamente, en 1912 el Tribunal Supremo de España dictó una sentencia transcendentalísima, adjudicando por primera vez una indemnización de daños morales. He aquí el comentario del Sr. Castan, actual Presidente del Tribunal Supremo de España, sobre este giro revolucionario de la jurisprudencia española:

"Jurisprudencia muy reiterada exige la existencia y prueba del daño para la procedencia de la indemnización de daños y perjuicios.

"¿De que naturaleza ha de ser ese daño? La doctrina científica admite que todo daño, material o moral, siempre que sea real y verificado, da lugar a reparación. En nuestra Patria, la antigua jurisprudencia del Tribunal Supremo (sentencia, por ejemplo, de 11 de marzo de 1899), rechazó los daños morales; pero la más reciente admite la resarcibilidad de estos. Inició esta dirección

una famosa sentencia de 6 de diciembre de 1912, que condenó a cierta Empresa periodística al pago de una fuerte indemnización por la publicación de noticias injuriosas, invocando precedentes del Derecho patrio (ley 21, tit. IX, Partida VII) y la consideración de que los daños morales, sobre ser de los más graves, llevan consigo, como consectarios naturales y lógicos, otros daños materiales y sociales. La doctrina de esta sentencia está confirmada por las de 14 de diciembre de 1917, 7 de noviembre de 1919, 15 de octubre de 1920, 12 de marzo, 10 de julio de 1928, 31 de marzo de 1931 y 26 de mayo de 1943, dictadas también en pleitos sobre daños al honor, reputación o crédito de las personas. *La determinación de la cuantía de los daños se remite en ellas al criterio prudencial* del juzgador." (2 Castan, Derecho Civil Español, Comun y Foral, 1943 ed. pp. 466–467.)

En otra sentencia más específica sobre lesiones, de 1941, el Tribunal Supremo de España declaró lo siguiente:

"El delito de lesiones, como los demás contra las personas, supone un daño, de orden físico, y las consecuencias que de él se derivan, muchas de ellas que afectan de modo directo al patrimonio familiar, esto sin contar otras repercusiones que pueden darse en dicho patrimonio y que el Tribunal pudo apreciar cuando fijó la indemnización y apreciando este las pruebas en conciencia, sin que nada limite la libertad del juzgador, ello impide casar la sentencia." (S. 14 de Febrero de 1941; 2 Rodriguez Navarro, Doctrina Penal del Tribunal Supremo p. 2223.)

Y en otra sentencia de 1934, sobre indemnización de daños morales, el mismo Tribunal sentó la siguiente doctrina:

"La responsabilidad civil no atiende únicamente a la reparación de los daños o perjuicios eminentemente materiales, ni se reduce sólo a la satisfacción de los menoscabos económicos consistentes en un daño emergente o en un lucro cesante, sino que comprende también los daños morales, entendiéndose por tales, tanto aquellos aminorando la actividad personal debilitan la capacidad para obtener riquezas, es decir, los daños morales indirectamente económicos, como los constituidos por el simple dolor moral, aunque no trascienda a la esfera patrimonial, porque el Derecho Penal es un derecho reparador, y el orden jurídico perturbado por la acción criminal no quedaría plenamente restablecido si no se atendiera a reparar dentro de lo posible no solo el derecho violado y la seguridad social puesta en peligro, sino las últimas consecuencias apreciables de la acción delictiva, y si bien la regulación de los daños y perjuicios ocasionados por el delito es facultad que compete al Tribunal de instancia, como la estimación de los mismos puede ser revisable en casación, es necesario que tratándose de daños y perjuicios patrimoniales o de daños morales indirectamente económicos, siente la Audiencia sentenciadora entre los hechos que estime probados los imprescindibles para deducir la efectividad del menoscabo patrimonial, daño emergente, lucro cesante o disminución de la capacidad económica, pero tratándose de daños constituidos por el simple dolor moral no es necesario sentar afirmaciones específicas que los determinen, pues siendo tales daños consecuencia inmediata del hecho delictivo, en el que van embebidos y supuestos, basta la determinación del hecho punible para poderlos apreciar como consecuencia natural de la acción criminosa ejecutada. (S. 14 de Noviembre de 1934; tomo 131 Jur. Crim., p. 584; 2 Rodriguez Navarro, Doctrina Penal del Tribunal Supremo, pp. 2222–2223.)

Concluimos, pues, reafirmando la doctrina sentada en el asunto de Lilius *supra,* en el sentido de que cabe indem-

nizar *por* daños morales y partrimoniales, incluyéndose en éstos el dolor y sufrimiento físico. Con ésto efectuamos en esta jurisdicción una verdadera simbiosis del derecho hispano y derecho americano, y nos ponemos, además, justamente a tono con el espíritu y la marcha progresiva de los tiempos.

¿No legislamos con ésto judicialmente? De ningún modo. No introducimos ninguna reforma en el código civil; todo lo que hacemos es ampliar la interpretación del concepto jurídico del daño, incluyendo en el mismo el daño moral y dolor o sufrimiento físico; pero todo dentro del código. La famosa sentencia de 1912 del Tribunal Supremo de España de que habla el Sr. Castan no sólo no extravasa los confines del código civil, sino que va a las raíces del mismo, "invocando precedentes del derecho patrio—ley 21, tit. IX, Partida VII," según palabras mismas del insigne tratadista.

En méritos de lo expuesto, se confirma la sentencia del Tribunal de Apelación, con las costas a cargo de la apelante. Así se ordena.

Moran, Pres., Parás, Pablo, Bengzon, y *Montemayor, MM.,* están conformes.

FERIA, *M.:*

Me reservo el derecho de escribir una opinión disidente.

PERFECTO, *J.,* concurring:

On July 14, 1939, at about four o'clock a.m., after taking a cup of coffee in the Central Hotel, Juan Castro boarded taxicab No. 962, a car for hire owned by Acro Taxicab Co., driven by Sancho Ruedas, to go home. The taxicab proceeded northward on Rizal Avenue. Before reaching Lope de Vega, Castro told the driver to turn to the right on the next cross-street, Zurbaran. Ruedas drove the car so fast that when it had to turn to the right on Zurbaran, it collided with taxicab No. 936, owned by the same Acro Taxicab Co., which was coming from the north. Ruedas' car hit the fire hydrant located on the sidewalk at a point east of Rizal Avenue and southeast of Zurbaran. Both cars were heavily damaged.

Castro went immediately to the Philippine General Hospital in another car. He felt acute pains on the left side of the chest, and he had difficult breathing, fever and coughs. An X-ray picture revealed that he had five fractured left ribs. After three days' stay in St. Luke's Hospital, he was advised to go home because the hospital charges were rather heavy. He was treated for a month in his home. Then he reported to his surgeon twice, once every two weeks. The Court of Appeals found chauffeur Sancho Ruedas guilty of recklessness in a decision penned by Mr. Justice Padilla and concurred in by Mr. Justice Generoso and Mr. Justice Tuason. It granted

Castro ₱1,000 for medical fees and expenses and ₱3,000 as "adequate compensation for fees and for his disability to work during the time he had been actually disabled to perform the work previously done by him."

Acro appealed.

There is no question that the litigation presents a case of *culpa contractual* and that Acro is liable under articles 1902 and 1903 of the Civil Code, for the damages suffered by Juan Castro.

The pertinent provisions of the Civil Code are as follows:

"Any person who by an act or omission causes damage to another by fault or negligence shall be liable for the damage so done. (Article 1902.)

"The obligation imposed by the next preceding article is enforcible, not only for personal acts and omissions, but also for those persons for whom another is responsible. (Article 1903.)

* * * * * * *

"Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties." (Article 1903.)

There is no question that Sancho Ruedas, the Acro driver, was guilty of recklessness in driving his car at immoderate speed; that Acro, as the owner of the taxicab, is liable for the damages caused by Sancho Ruedas, its employee, and that Juan Castro is entitled to be indemnified "for any damages."

There is disagreement on two important questions: 1. whether the owner of the taxicab is exempted from liability if said owner has acted with the diligence of a good father of a family in the selection of his employees, under the theory enunciated in Bahia *vs.* Litonjua (30 Phil., 624), and 2, whether the pains suffered by the victim are included in the damages contemplated in articles 1902 and 1903 of the Civil Code.

We will dispose of the first question briefly. The doctrine laid down in the Bahia case is absolutely illegal, wrong, and unjust. It is based on a philosophy intended to serve the interest of capitalists. It offers a shield of irresponsibility to the owner of public services and other enterprises dealing with the public in general, in utter discrimination against the defenseless public.

There is no single word in the law on which the doctrine may stand.

The only provision upon which any exemption may be claimed by the owners or directors of an establishment or business for damages caused by their employees appears in the seventh and last paragraph of article 1903 of the Civil Code which says:

"The liability imposed by this article shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage."

The above provision does not make any mention of the diligence of a good father of a family in the selection of the employee, but "to prevent the damage." Diligence in the selection of a good employee is not equivalent to diligence undertaken "to prevent the damage." Diligence in the selection of an employee may be considered as one of the measures to prevent damages in general, but it alone is not enough. The person appointed may be as perfect a chauffeur as he can be, but it cannot be denied that there are many causes that may affect his efficiency in the course of his service, such as age, health, incorrect instructions, bad company, drunkenness.

The exemption provided by the last paragraph of article 1903 can be availed of only when the employers shall have "proved that they exercised the diligence of a good father of a family to prevent the damage," which cannot be limited to a single act of diligence. The provision refers, furthermore, not to damages that may be caused in general, but to the specific damage complained of by the victim.

The second question hinges on the interpretation of the word "damage" as used in article 1902 and of the words "any damages" of par. (4) of article 1903, of the Civil Code.

Let it be noticed that the words "damage" and damages" are used by the Civil Code without any qualification or limitation. Consequently, they should comprehend all that are embraced within their meaning. They include any and all damages that a human being may suffer in any and all the manifestations of his life: physical or material, moral or psychological, mental or spiritual, financial, economic, social, political, religious.

The specific question in controversy is whether Juan Castro is entitled to recover from Acro an indemnity for his "pains." He suffered fever, coughs, five broken ribs, and had undergone medical treatment. Were his "pains" among the damages he suffered due to the accident caused by the reckless driving of Sancho Ruedas?

There is absolutely no doubt to our mind that they were. And we would add that they constitute the largest and more important item of his damages. The physical, moral and mental suffering which he endured due to the accident entailed to him the loss of positive economic values. The shock resulting from the fracture of five ribs shall remain forever in his memory as a sad experience, and will leave in his organism a permanent scar or internal deformity. The physical and chemical disturbance affecting the billions of atoms composing his body may not actually be measured with precision by physicians and other scientists but the physiological and psychical effects of the disturbance cannot be completely obliterated for the rest of his life. Any breakage or violent disrup-

tion produced by the impact of an accident, even if repaired, ordinarily leaves the organism weakened and causes many unpredicted after-effects.

The loss of his personal freedom resulting from his hospitalization and compulsory confinement at home for the duration of his treatment resulted in the loss of a thing of an unquestionable economic value. With the hospitalization and compulsory confinement, he was deprived of the economic opportunities of his personal freedom, of enjoying life in the company of people, of enjoying the entertainments of a civilized city. He would have wanted to see moving pictures, and he lost the margin of economic value after paying the entrance fees. He would have wanted to attend a boxing match for which he would be willing to pay ₱20 as entrance fee, because it is a spectacle that would mean to him ₱40 in value. Then he was deprived of the margin of ₱20.

Just to be free from his compulsory confinement, he might have been willing to pay ₱3,000 or more, and that much may be a rough measure of his more than a month loss of freedom. There are many who would pay even much more to avoid losing freedom even for a single day.

Physical pain and injured feelings are among the damages recognized in the most civilized countries of the world, such as the United States of America, England, France, Germany, Italy, Austria and Switzerland. Without admitting that they enjoy an infallible wisdom, there is no question that their concept of damage is based on reason and human experience. Spain itself has abandoned its 19th century error, by following the unconquerable drift of modern legal thought of the 20th century. Unable to resist the impetus of the new legal truth, the Supreme Court of Spain has reversed its judgment of December 6, 1882, which undiscerningly was followed by our Supreme Court in its pre-Commonwealth days thus committing the error in its decision rendered forty years ago on September 17, 1908, in the case of Marcelo *vs.* Velasco (11 Phil., 287).

On the question whether or not plaintiff was entitled to recover for "the pains which he experienced by reason of the accident," the decision said: "We have found nothing either in the judgment of the Supreme Court of Spain or in any of the commentaries which would permit such recovery." (11 Phil., 291.) This statement exhibits a wrong legal outlook. Why had the Court to seek for any judgment of the Supreme Court of Spain or for commentaries, when the text of articles 1902 and 1903 of the Civil Code is clear enough?

Why go too far when the law was at hand?

We regret that the Court had followed, by wrong doxastic process, the traditional procedure of deciding liti-

gations by looking for precedents first and reading the law as a last resort, when the logical procedure should be the reverse, law first and precedents after. After all, precedents are laid down, not as superlaws, but as interpretations of the law. Paying them latreutic worship is a sure way to miscarriage of justice.

Not finding then any precedent from the Supreme Court of Spain that would allow recovery for pains, this Court just followed the reasoning of the judgment of the Supreme Court of Spain of December 6, 1882 (27 Jurisprudencia Criminal, 414) and that of Viada, in his Commentaries on the Penal Code (Vol. I, p. 539), where he says: "with regard to the offense of lesiones, for example, the civil liability is almost always limited to indemnity for damages to the party aggrieved for the time during which he was incapacitated for work," and, upon such pronouncements, this Court laid down in 1908 in the Marcelo case the rule that recovery for pains is not permitted. A brief analysis will readily show the flaws and weaknesses of the position taken in the Marcelo case.

The Viada opinion does not support the rule in the Marcelo case for the following reasons:

1. Viada does not exclude pains from the meaning of the word damages.

2. Damages to the aggrieved party from the time during which he was incapacitated for work may perfectly include pains, which usually does not last longer than incapacity for work.

3. Viada used the adverb "almost" which necessarily implies exception.

With respect to the reasoning of the Supreme Court of Spain, it has such an inherent weakness that it cannot be seriously taken as authoritative. It says: "Inasmuch as the value of honor is a thing that cannot be appraised, it is not possible to fix the amount of damages, nor can the payment of indemnity be imposed upon the offender under article 18 of the Code, by way of civil liability arising out of the criminal act."

The reasoning is based on the premise that the value of honor cannot be appraised. From that premise, the Spanish Supreme Court concludes that it is impossible to fix the amount of damages and, therefore, no such damages should be indemnified. But the premise is wrong. It asserts an absolute, which is incompatible with the relativities of human nature.

The exact value of pain, injured feelings, or honor cannot be fixed as a mathematical absolute that would deserve universal acceptance, but it is not impossible to make an approximate appraisal. There are difficulties in fixing the maximum or average, but it is possible to have general agreement as to the minimum. For example, almost every-

one may agree that any normal person will be willing to pay not less than ₱100 just to spare him the physical pains suffered by Juan Castro, resulting from the accident that broke five of his ribs. Any normal person would be willing to pay not less than ₱1,000 to avoid the moral suffering entailed in a grave offense to his honor, dignity, reputation, pride, or vanity. Of course, there will be as many maximum prices as there are individuals who are to fix them, and it is known that many individuals have staked their lives to vindicate a slight offense to their honor.

There cannot be any dispute that there is economic value in physical, or moral, or mental suffering. Even the Spanish Supreme Court in its judgment of December 6, 1882, had to admit it when it says: "the value of honor is a thing that cannot be appraised." If it has value, its loss must be indemnified, if articles 1902 and 1903 of the Civil Code are not a dead letter. When the Spanish Supreme Court says that it "cannot be appraised," it thought in terms of precision, exactness, absolute. It failed to grasp the idea that a court of justice may make an appraisal of the minimum value. It is absurd that because the full value of the damage suffered by the victim cannot be measured he should be denied all indemnity, including the minimum that a tribunal can fairly determine.

That is the same sophistic reasoning upon which, in the assumption that his lending contract was valid, Shylock was denied his pound of flesh, unless he could have taken the exact pound, without any more or less infinitesimal fraction. With such kind of philosophy, there would be very few accident sufferers who would be entitled to any indemnity at all, as there is hardly any case where the value of damages, other than physical or moral pains, can be determined with absolute precision. In the case of Juan Castro, the Court of Appeals was not able to determine the exact amount of the expenses incurred by the victim.

The philosophy behind the judgment of the Supreme Court of Spain, rendered on December 6, 1882, has been completely abandoned by the same court since December 6, 1912. The obsolete philosophy of the 19th century has given way to the reasonable and realistic philosophy of the 20th century.

The honor and reputation of a woman constitute her more valuable social possessions. Their loss is one of the greatest losses that she can suffer in a civilized society, as it deprives her of opportunity of showing the character of custodian of the sacred ends of the home, basis and cornerstone of public society, and it is a damage among the most serious ones that the tribunals, in charge of dispensing justice, should take into consideration to

determine civil responsibility. Thus the Spanish Supreme Court expressed itself on December 6, 1912.

In another decision, rendered on July 10, 1928, the Supreme Court of Spain again laid down the doctrine that the indemnity should cover "not only material damages, but also moral damages."

Manresa in the fourth edition of his comments on the Civil Code (Vol. 12, page 550), on the authority of the decision of the Spanish Supreme Court on December 6, 1912, set the rules for the appraisal of "moral damages" and other commentators, on the authority of a judgment rendered by the Spanish Supreme Court on April 4, 1936, stated that "jurisprudence has sanctioned the principle of pecuniary reparation for damages of moral nature." (Medina and Marañon, *Leyes Civiles de España,* 1943 edition, page 517.)

There is no sense for our Supreme Court to continue sticking to the 19th century doctrine set by the Spanish Supreme Court in 1882, and which the same court has already abandoned in this century of fuller enlightenment.

Now that human mind has undergone a wonderful awakening and reason has conquered new ever widening fields of the spirit, when Edison, Tesla, and Bell have enriched humanity's patrimony with unpredicted inventions, when men travel in the bottom of oceans and in the stratosphere, when scientific miracles such as X-Ray, radio and television are becoming the possession of the average human being, when discoveries of such scientific geniuses as Madame Curie, Rutherford, Einstein, and Lise Meitner have paved the way to the present Atomic Era, when the old dynasties of the two largest modern empires have toppled down under the onslaught of Sun Yat Sen and Lenin, when we are enjoying the benefits of the fresh teachings of such spiritual and moral leaders as Rizal, Mabini, and Gandhi, and of the guidance of political leaders of the stature of Franklin D. Roosevelt and Manuel L. Quezon, and new nations have been born to give to one fourth of humanity the taste of political freedom, when we are receiving enlightenment from the new legal ideas of Holmes, Brandeis, and Cardozo, the three stalwarts of jurisprudence who honored with their geniuses the highest Tribunal of the greatest Republic, it would be anachronistic for this Supreme Court to allow itself to be bound by an outworn 19th century legal philosophy.

The way for the revision of the old doctrine has been paved as early as 1918 by the concurring opinion of Mr. Justice Malcolm in Manzanares *vs.* Moreta (38 Phil., 821) where he stated: "The right of action for death and the presumption in favor of compensation being admitted, the difficulty of estimating in money the worth of a life should not keep a court from judicially compensating the

injured party as nearly as may be possible for the wrong. True, man is incapable of measuring exactly in the delicate scales of justice the value of a human life. True, the feelings of a mother on seeing her little son torn and mangled—expiring—dead—could never be assuaged with money. True, all the treasures in nature's vaults could not be given to compensate a parent for a loss of a beloved child. Nevertheless, within the bounds of human powers, the negligent should make reparation for the loss." Following this line of reasoning, on January 30, 1930, in the case of Bernal *vs.* House (54 Phil., 327) the Supreme Court awarded the plaintiffs therein damages for the death of their child, notwithstanding the lack of satisfactory proof of pecuniary loss, saying that "there is nothing in the entire world to compensate a mother for the death of her child."

There is every reason why the word "damage" as used in articles 1902 and 1903 of the Civil Code should be construed in its true meaning, as including all kinds of human damage, regardless of their nature. It is in accordance with the legal thought of the most civilized countries, United States of America, England, France, Germany, Italy, Austria, Switzerland, Spain, and it is based on sound reason.

The decision of the Court of Appeals should be affirmed.

Se confirma la sentencia.

[No. L-2204. Diciembre 15, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* JOSÉ DE LA CRUZ Y AMALDA, acusado y apelante

DERECHO PENAL; HURTO; ABUSO DE CONFIANZA.—La mera alegación contenida en la querella de que el acusado y los ofendidos eran compañeros de casa (*housemates*) no cualifica el hurto, pues tal compañerismo no es el ingrediente del grave abuso de confianza de que habla el Código Penal Revisado para los efectos de la cualificación y agravación del hurto bajo el artículo 310. El grave abuso tiene que originarse de relaciones especiales de intimidad y confianza entre el ofensor y la parte ofendida. El acceso que proporciona la circunstancia de ser compañero de casa, engendra en todo caso cierto abuso de confianza, pero no el grave abuso que el código exige como requisito para cualificar y agravar el hurto.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Peña, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Francisco R. Capistrano en representación del apelante.

El Procurador General Auxiliar Sr. Manuel P. Barcelona y *el Procurador Antonio A. Torres* en representación del Gobierno.

BRIONES, *M.:*

El apelante en esta causa, José de la Cruz y Amalda, ha sido condenado por el Juzgado de Primera Instancia de Manila, por el delito de hurto cualificado, a sufrir una pena indeterminada de 2 años, 4 meses y 1 día de prisión correccional a 8 años y 1 día de prisión mayor, y al pago de las costas, teniendo un valor de ₱63.50 los objetos hurtados. El acusado se declaró culpable después de leérsele la siguiente querella:

"That on or about the 17th day of February, 1948, in the City of Manila, Philippines, the said accused with grave abuse of confidence, he being at the time of the commission of this offense a housemate of the offended parties and as such had free access to the property belonging to the latter, did then and there wilfully, unlawfully and feloniously, with intent of gain and without the consent of the owner thereof, take, steal and carry away the following personal properties belonging to, etc., etc."

El abogado de oficio del apelante, D. Francisco Capistrano, en un alegato cuidadosamente redactado, tacha de errónea la sentencia apelada por considerarse en ella el delito como hurto cualificado en vez de simple hurto. Se arguye que la alegación expresada en la querella de que "al tiempo de cometerse el delito, el acusado era compañero de casa (*housemate*) de los ofendidos," no cualifica el hurto en el sentido de agravarlo y de justificar la imposición de una pena inmediatamente mayor en dos grados a la señalada para el simple hurto, a tenor del artículo 310 del Código Penal Revisado. Es verdad—añade el abogado defensor—que el acusado se declaró culpable y que, al parecer, esta declaración de culpabilidad implica una admisión de la otra alegación de la querella que dice que el hurto se cometió "con grave abuso de confianza," pero esta última alegación no es más que una conclusión de derecho; asi que la declaración de culpabilidad no alcanza ni se extiende a ella, pues solamente las alegaciones de hecho expuestas en la querella pueden ser objeto de admisión. (People *vs.* Koc Song, 63 Phil., 369, 371; U. S. *vs.* Barba, 29 Phil., 206, 208; Moore *vs.* State, 53 Nebr., 831; 74 N.W., 319.)

Resolvemos la cuestión suscitada a favor del apelante. La mera alegación contenida en la querella de que el acusado y los ofendidos eran compañeros de casa (*housemates*) no cualifica el hurto, pues tal compañerismo no es el ingrediente del grave abuso de confianza de que habla el Código Penal Revisado para los efectos de la cualificación y agravación del hurto bajo el referido artículo 310. El grave abuso tiene que originarse de relaciones especiales de intimidad y confianza entre el ofensor y la parte ofendida. El acceso que proporciona la circunstancia de ser compañero de casa, engendra en todo caso cierto abuso de confianza, pero no el grave abuso que el código exige como requisito para cualificar y agravar el hurto. Así

lo hemos declarado en el asunto citado de People *vs.* Koc Song, a saber:

"* * * The allegation in the information that the crime was committed with the qualifying circumstance of grave abuse of confidence, is a mere conclusion of law. The only fact alleged as constituting said circumstance is that the accused and the offended party were housemates when the crime was committed. While this fact constitutes a certain abuse of confidence, because living together under the same roof, although accidentally, engenders some confidence, it is not necessarily grave, there being no allegation in the information of another relation by *reason of dependence, guardianship or vigilance,* between the accused and the offended party, that might create a higher degree of confidence between them, which the accused could abuse."

Esto mismo se ha declarado en varias sentencias del Tribunal Supremo de España. Por ejemplo, en la de 13 de Abril de 1893 (Viada, Código Penal, Suplemento 2, p. 391) el referido Tribunal dijo lo siguiente:

"* * * es evidente que, si bien en el delito de hurto intervino patente abuso de confianza al efecto del número 10 del artículo 10 del Código Penal, no reviste, sin embargo, el carácter de grave abuso que la sentencia reclamada estima con error de derecho, porque el mero accidente de * * * ocupar ambos la habitación en que los efectos sustraidos se hallaban no implica por si que se confiriera al procesado encargo de vigilancia o custodia especiales que lo demuestre, y por tanto no puede agravarse la delincuencia para apreciar como cualificativa una circunstancia que sólo merece el concepto de agravante genérica."

En méritos de lo expuesto, se modifica la sentencia apelada y se condena al apelante por hurto simple a sufrir 3 meses de arresto mayor, y al pago de las costas. Así se ordena.

Moran, Pres., Parás, Feria, Pablo, Perfecto, Bengzon, Tuason, y *Montemayor, MM.,* están conformes.

Se modifica la sentencia.

[No. L-2118. Diciembre 16, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* FLORENCIO BARRERA, acusado y apelante

DERECHO PENAL; ROBO CON HOMICIDIO; PRUEBAS; LA CULPABILIDAD DEL ACUSADO DEBE PROBAR FUERA DE TODA DUDA RACIONAL.—Las pruebas de cargo no establecen fuera de toda duda razonable la culpabilidad del apelante, aún suponiendo que la defensa de coartada alegada por éste fuese débil, como asevera el Juez *a quo* en su sentencia. La debilidad de la defensa no puede tener el efecto de sustanciar las pruebas de convicción: éstas tienen que sostenerse por sí mismas y sobre sí mismas. En la presente causa, la versión dada por los testigos de cargo durante el juicio es incompatible con la que habían dado ante los agentes del orden inmediatamente después del suceso de autos—versión que, hay que presumir, era más expresiva de la verdad por ser más fresca y espontánea.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Rizal. Gonzalez, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Cornelio R. Magsarili en representación del apelante.

El Procurador General Auxiliar Sr. Ruperto Kapunan, Jr., y *el Procurador Adolfo Brillantes* en representación del Gobierno.

BRIONES, *M.:*

Trátase de la apelación interpuesta por el acusado, Florencio Barrera, de la sentencia del Juzgado de Primera Instancia de Rizal en que se le declara convicto del delito de robo con homicidio y se le condena a la pena de reclusión perpetua, con las accesorias de ley; a indemnizar a los herederos del occiso Uy Siok en la suma de ₱2,000, y a Kang See, que fué víctima del robo, en la suma de ₱75, y a pagar las costas del juicio. A petición del ministerio fiscal, se sobreseyó la causa contra los otros acusados.

Los hechos y circunstancias del caso son sustancialmente los siguientes:

Después de la media noche del 22 de Noviembre, 1945, en el municipio de Tanay, provincia de Rizal, tres malhechores desconocidos entraron en la casa de un tal Uy Siok, y una vez dentro uno de los asaltantes amenazó con un revolver a Kang See y Pang Ang Tim, compañeros de casa de Uy Siok, requiriendo de los mismos la entrega de dinero. Mientras esto ocurría, Uy Siok yacía muerto en el suelo, cerca de donde estaban, sobrecogidos de terror, Kang y Pang, quienes dijeron después haberles despertado el sonido de un disparo mientras dormían. Kang See, a quien le quitaron ₱75, dió cuenta del caso a las autoridades, declarando ante la policía—y ésta así lo hizo constar en el "blotter"—que los salteadores eran individuos desconocidos. Dos o tres días después del incidente fueron detenidos como sospechosos 3 vecinos de la casa asaltada llamados León Fulgado, Simeón Porciúncula y Florencio Barrera, el apelante en la presente causa.

Después de una semana se dió traslado del caso a la policía militar de Pasig, Rizal, para los efectos de una más acabada investigación, de la cual se hizo cargo el teniente Cayetano Tuason, de la división de inteligencia. Durante esta investigación el testigo Kang See firmó una declaración jurada que es el Exhíbit 1, en la cual manifestaba no estar seguro sobre la identidad del acusado y apelante como uno de los individuos que entraron en su casa en la noche de autos, si bien recordaba que el malhechor era de la misma estatura y cuerpo que el apelante.

En otra investigación practicada por el fiscal provincial auxiliar de Rizal el referido testigo Kang See ya dió otra

versión diciendo que él había reconocido en aquella noche al acusado y apelante por su voz.

En la vista de la causa el mismo testigo Kang See relató algunos detalles que no había relatado anteriormente ni ante la policía del pueblo inmediatamente después del suceso de autos, ni ante el teniente Tuason, de la policía militar, una semana después. Por ejemplo, en su testimonio durante la vista ya identificó específicamente al apelante diciendo que en aquella noche "había luna" * * * y "el cuarto donde yo dormía tenía dos ventanas, la una hacia mi lado izquierdo y la otra por delante, y el hombre que portaba el revólver (el apelante), mientras estaba levantado estaba de frente a una de las ventanas y *ese es el motivo porque pude reconocerle*" (t. n. t., pág. 10; el subrayado es nuestro). Sin embargo, cuando este mismo testigo dió cuenta del caso a la policía del pueblo en la misma noche de autos no sólo no dió ese detalle de la luna que *diz* le permitió reconocer al acusado, sino que dijo que los asaltantes le eran desconocidos, y, en efecto, así se hizo constar en el "police blotter," Exhíbit 2. Más todavía: cuando una semana después este mismo testigo fué investigado por el teniente Tuason, de la policía militar, tampoco reveló ese detalle de la luna, sino que, por el contrario, dijo que "no ví su cara porque era oscuro." He aquí la parte pertinente de la transcripción de la investigación practicada por el teniente Tuason:

"I, Cang See, 38 years of age, residing at Tanay, Rizal, being first duly sworn on oath, depose and say in the following questions and answers asked by Second Lt. Cayetano F. Tuazon, this 30th day of November, 1945.

"Q. On 21 November 1945, at about 01.00 hours what happened?—A. I was already asleep inside our house and Uy Siok was sleeping in another room. Then I heard a shot and I was awakened. I sat on the bed and then Uy Siok staggered in and fell down, being followed by an armed man who pointed his gun on me. The armed man asked me where is my money. I gave him my ₱75.00. Then the armed man pointed his gun at my companion Pang Ang Tiong and demanded for money from the latter. As he could get no money, the armed man still pointing the gun at us backed out and left.

"Q. Do you know who that armed man was?—A. *I did not see his face as it was dark* but I may know him by his height, body and he was wearing a dark jacket, long pants dark, a cap and with heavy shoes on which made a lot of noise.

"Q. Presenting to you six men, could you say which one of them was the armed man?—A. *Because it was dark I did not see his face* of the armed man but remembering the height and body of the armed man, he is of the same height and body of this man. (Affiant pointing to Florencio Barrera.)" (Italics supplied.)

Kang See ha tratado de desacreditar esta investigación diciendo que él no sabe inglés y conoce muy poco el tagalo, siendo el visayo el dialecto que mejor entiende; y efectivamente ha desmentido algunas declaraciones que se le atribuyen en dicha investigación. La pretensión es insostenible. Según el mismo testigo, él había estado viviendo

y negociando en Manila y en varios pueblos de la provincia de Rizal, por lo menos, durante 5 años antes del suceso; así que es increible que no entendiera lo suficiente el tagalo para comprender las preguntas que se le hicieron durante la investigación. Resulta, además, temeraria la insinuación de que un oficial de la policía militar falseara las declaraciones del mejor testigo que podía tener la prosecución sobre el crimen.

Otro detalle que desacredita el testimonio de Kang See durante el juicio es la aserción de que reconoció al acusado en la noche de autos por su voz, pués, según admisión del mismo testigo, él nunca había tenido ocasión de hablar con el apelante durante los dos años que había estado viviendo y negociando en Tanay.

Lo que decimos del testimonio de Kang See, también puede decirse, y con creces, del testimonio de Pang Ang Tim, testigo de corroboración.

Nuestra conclusión, pues, es que las pruebas de cargo no establecen fuera de toda duda razonable la culpabilidad del apelante, áun suponiendo que la defensa de coartada alegada por éste fuese débil, como asevera el Juez *a quo* en su sentencia. La debilidad de la defensa no puede tener el efecto de sustanciar las pruebas de convicción: éstas tienen que sostenerse por sí mismas y sobre sí mismas. En la presente causa, la versión dada por los testigos de cargo durante el juicio es incompatible con la que habían dado ante los agentes del orden inmediatamente después del suceso de autos—versión que, hay que presumir, era más expresiva de la verdad por ser más fresca y espontánea.

Por lo expuesto, se revoca la sentencia apelada y se absuelve al acusado y apelante de la querella, con las costas de oficio. Así se ordena.

Moran, Pres., Parás, Feria, Pablo, Perfecto, Bengzon, y *Tuason, MM.,* están conformes.

Se revoca la sentencia y se absuelve al acusado

[No. L-604, Diciembre 17, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* ANICETO ARIBAS, acusado y apelante

1. DERECHO PENAL; TRAICIÓN; PRUEBAS; DECLARACIÓN NEGATIVA CONTRA DECLARACIÓN POSITIVA.—No merece seria consideración la defensa que es una simple negativa en contraposición con la declaración positiva de los tres testigos de la acusación llamados B. R., V. D. e I. S. Es increíble que el acusado, si no estuviese íntimamente identificado con los japoneses como espía o de otro modo, se haya atrevido a viajar con la patrulla y que haya podido utilizar los servicios, en la transportación de un saco de palay, de los otros filipinos que eran parte de la patrulla.

2. ID.; ID.; ID.; ÚNICA DECLARACIÓN DEL ACUSADO, EL PESO DE.— Reiteramos la doctrina ya bien establecida en esta jurisdicción que no puede, ni debe prevalecer la única declaración del acusado sobre el testimonio afirmativo de testigos veraces que declaran haber visto los actos que el acusado niega haberlos hecho.

APELACIÓN contra una sentencia del Tribunal del Pueblo.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Juan R. Perez en representación del apelante.

El Primer Procurador General Auxiliar Sr. Roberto A. Gianzon y *el Procurador Sr. Manuel Tomacruz* en representación del Gobierno.

PABLO, *M.:*

Condenado por el delito de traición a la pena de reclusión perpetua, una multa de ₱10,000 y las costas, Aniceto Aribas acude a este Tribunal en apelación, alegando que las pruebas presentadas contra él no son suficientes para justificar su culpabilidad.

En la mañana del 7 de Mayo de 1944, en el barrio Habinutong, Alang-alang, Leyte, una patrulla compuesta de nueve japoneses y seis filipinos, guiada por el acusado, acorraló la casa de Victoria Dajac del barrio de Habinutong del mismo municipio, donde Pedro Quintana estaba entonces de guardia. Era miembro del cuerpo de voluntarios que operaba en dicho municipio en comunicación con las guerrillas que estaban en el monte. Al percatarse de la llegada de los japoneses, los que estaban cosechando palay cerca del lugar se escaparon y algunos se escondieron como la madre de Pedro Quintana, Victoria Dajac e Ignacio Serona. Este último que era sargento de guerrillas quería avisar a Quintana de la proximidad de la patrulla; pero ya no tuvo tiempo de hacerlo. Por eso, se escondió y observó todo cuanto pasó. Apenas llegó cerca la patrulla, el acusado llamó a algunos de sus compañeros para subir a la casa. Le siguieron Julio Marrera y Diosdado Marmeta. Inmediatamente maltrataron a Pedro Quintana. El acusado ordenó a un compañero que buscase un mecate para atar a Pedro Quintana. Julio Marrera fué el que sacó el mecate. Después de algún tiempo el acusado y sus compañeros traían escaleras abajo a Pedro Quintana con las manos amarradas en la espalda con un cordel, el cual estaba atado asimismo al cuello a modo de cabestro. Con la cara ensangrentada, le condujeron a la casa del acusado que estaba a unas 50 brazas de la casa en donde fué arrestado. Julio Marrera que portaba el cabestro con que fué amarrado Pedro, le ató a un cocotero, como si fuese un animal. Inmediatamente le sometieron a una rígida investigación para que confesase que era guerrilla y que revelase los nombres de los que habían suministrado

palay a las guerrillas en el monte y como no daba una contestación satisfactoria, le maltrataron mientras los soldados japoneses gozaban viendo los puñetazos y puntapiés que propinaban los espías filipinos al torturado. Después que Pedro Quintana se había repuesto de los maltratos, el acusado le ordenó que llevase un saco de palay hasta el pueblo de Alang-alang. Con el palay a cuestas, Pedro siguió a la patrulla hácia el pueblo y durante la caminata varias veces cayó de bruces en tierra. El acusado tenía necesidad de la compañía de los japoneses para recoger un saco de palay porque su casa estaba solamente a 50 brazas del cuartel del cuerpo de voluntarios. Ya no vivía en el lugar por sus actividades projaponesas.

Bárbara Ramos, madre de Pedro Quintana, había acudido al alcalde del municipio de Alang-alang para que intercediera por la liberación de su hijo que estaba entonces detenido en el cuartel de la guarnición de los japoneses; pero no consiguió nada, solamente pudo entrevistarse con su hijo y vió que él tenía un diente roto causado por los maltratos.

En Febrero de 1945, a indicación del jefe de policía, fueron exhumados en presencia de dos miembros del CIC del Ejército Americano, los restos mortales de uno que fué sepultado en un rincón de la plaza del pueblo que resultaron ser de Pedro Quintana. Su madre consiguió identificarlo por el diente roto que tenía cuando estaba detenido en el cuartel de los japoneses.

Como defensa, el acusado declaró que estando en Alang-alang, había recibido un informe de Clemente Catina que una patrulla de japoneses pasaría por su terreno; aprovechó dicha oportunidad para ir juntamente con la patrulla; al llegar a la casa de su aparcero, se quedó; la patrulla fué más adelante, y media hora después, estaba de vuelta con un joven preso. El acusado se unió, según él, al grupo llevando un cavan de palay ayudado por los otros filipinos que formaban parte de la patrulla. Él no conocía al joven preso ni sabía dónde fué arrestado, ni siquiera se había enterado de que haya sido maltratado.

No merece, en nuestra opinión, seria consideración esta defensa que es una simple negativa en contraposición con la declaración positiva de los tres testigos de la acusación llamados Bárbara Ramos, Victoria Dajac e Ignacio Serona. Es increíble que el acusado, si no estuviese íntimamente identificado con los japoneses como espía o de otro modo, se haya atrevido a viajar con la patrulla y que haya podido utilizar los servicios, en la transportación de un saco de palay, de los otros filipinos que eran parte de la patrulla. Si los filipinos se prestaron a llevar en hombros el cavan de palay será porque el acusado privaba en el alto mando de la guarnición japonesa en el pueblo. Si los que llevaron el palay han prestado el servicio voluntariamente o que

recibieron razonable compensación, no hubiera sido difícil para el acusado utilizar su testimonio en su defensa para refutar la prueba de la acusación de que Pedro Quintana fué utilizado por el acusado, después de ser cruelmente torturado, a llevar sobre sus hombros el cavan de palay. Esos mismos filipinos le hubieran defendido, si es verdad que sólo se unió a la patrulla para tener compañeros en el viaje y no formaba parte integrante de la patrulla, a la cual guiaba y ayudaba con desembarazo en la búsqueda de guerrillas. Es fuerza llegar a la conclusión que el cavan de palay fué llevado realmente por Pedro Quintana, como testifican los testigos de la acusación, y no por los otros filipinos, como asegura el acusado. Reiteramos la doctrina ya bien establecida en esta jurisdicción que no puede, ni debe prevalecer la única declaración del acusado sobre el testimonio afirmativo de testigos veraces que declaran haber visto los actos que el acusado niega haberlos hecho. (Pueblo *contra* Japitana, 43 Off. Gaz., 2067.)

Los hechos probados fuera de toda duda demuestran que el acusado cometió el delito de traición con infracción del artículo 114 del Código Penal Revisado. Se confirma la sentencia apelada con costas.

Moran, Pres., Parás, Feria, Perfecto, Bengzon, Briones, y *Tuason, MM.,* están conformes.

Se confirma la sentencia.

[No. L–1908. December 17, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* VIVENCIO CELESPARA, defendant and appellant

1. CRIMINAL LAW; MURDER; AGGRAVATING CIRCUMSTANCES OF NOCTURNITY AND DWELLING.—Appellant is guilty of the crime of murder, qualified by treachery. The prosecution recommends that the death penalty be imposed upon appellant, alleging that the offense was committed with the aggravating circumstances of nocturnity and dwelling. There is no evidence that the accused had intentionally sought the cover of darkness of the night to prevent his being recognized, to avoid interference, or to obtain some other advantage. There is no evidence that the house wherein she was killed was the dwelling of the deceased. According to S. C., he built it on the occasion of his wife's delivery. The mere fact that the deceased was at the time of the shooting taking supper in the house did not make her a dweller therein. No aggravating circumstance can be considered in this case.

2. ID.; ID.; ACCUSED'S AGE OF MINORITY.—The age of the accused had posed a legal problem. At the time he testified on March 22, 1947, he was 20 years old. The crime was committed on October 2, 1942. Therefore, he was then between 15 and 16 years old. That fact would entitle him to the benefits of article 80 of the Revised Penal Code. But this article presupposes that the accused is yet a minor. Because he is already of age, appellant can no longer be committed to the

custody of the proper institution as provided in article 80 of the Revised Penal Code.

3. ID.; ID.; ID.; MITIGATING CIRCUMSTANCE.—Appellant's specific case, however, would not require us to decide how the legislative hiatus in article 80 of the Revised Penal Code can be filled. The deficiency can be left to Congress for appropriate correction. Both witnesses for the prosecution and for the defense, without excluding appellant, agree that the latter has been living in adultery with G. de los R., wife of S. C., since 1943, and such conduct precludes appellant from enjoying the right to be released provided by article 80 of the Revised Penal Code. The fact that he was a minor at the time he committed the offense can, however, be considered as a mitigating circumstance.

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, J.

The facts are stated in the opinion of the court.

Generoso, Vera & Gregorio for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Jose P. Alejandro* for appellee.

PERFECTO, *J.:*

The witnesses testified in substance as follows:

1. Sotero Cantong, 20, married, farmer, Mondragon, Samar.—Catalina Cantong, his elder sister, was shot by Vivencio Celespara. At about 8 o'clock in the evening of October 2, 1942, he was taking supper in their house in barrio Agrupacion with his sisters Catalina and one other. "We had just started to take our supper and we heard a noise behind the house. It was a noise produced by simply separating the nipa shingles of the walling of the house. Immediately after we heard a gunshot. After the explosion, I looked from the kitchen where I was and I saw Vivencio Celespara holding a *bardug,* a homemade shotgun. My elder sister died. She was shot on the left nipple." (4–5). She immediately died. The witness was not in good terms with the accused, because the latter was after his wife. (6). Later on his wife became the paramour of the accused. "In fact my wife is already in his possession and they have already a child. They live together as husband and wife (since October, 1943)." (7). From that month his wife separated from him. When the shooting took place it was a moonlit night. Guillerma de los Reyes is the name of the witness' wife. Her child with the accused is a girl, one year old. (8). When the shooting took place Guillerma de los Reyes was not taking supper with the witness because "she has recently delivered a child." The house was only three brazas long. It was only a room which the witness constructed in view of the delivery of his wife. (9). The name of his other sister is Aurea. (10). The witness is legally married to Guillerma de los Reyes. He did not file any complaint for adultery against his wife and the accused

"because they have not yet child." His wife left their house in October, 1943. (16).

2. Victorino Caranog, 55, married, farmer, barrio Bagasbas, Mondragon.—At about 4 o'clock in the afternoon of October 2, 1942, Alberto Donor passed by their house and went directly to Bagasbas. (17). Their other companions were Vivencio Celespara and Silvestre Rondina. Upon reaching Bagasbas, Alberto Donor told the others to find out if there were still Japanese in the place. "We were about 25 persons but the rest we do not know." Donor was a corporal of the home volunteer guards. I simply went with them because they passed by my house. (18). We have not found any Japanese in that place. So I tried to look for my relatives there and while looking around for my relatives, I happened to pass by a place where Vivencio Celespara was separating nipa shingles through which he was peeping. It was the house of Sotero Cantong. The barrel of Celespara's gun was placed through that hole from the kitchen. Upon seeing him that he placed the barrel of his gun through the hole of the kitchen of that house, I told him not to do it because the people inhabiting that house were civilians but he answered telling me, 'never mind.'" The gun held by the accused was a *bardug*. The accused said that he was a member of the home volunteer guards. "I even pulled away the gun and he having not heard my advice, I proceeded on my way. (19). Upon arriving at around 4 brazas from the place where Vivencio Celespara was, I heard a gunshot. I ran away to the brook of Cananbanan." The detonation came from the gun of Vivencio Celespara. "We all assembled near the brook because their corporal was also there." (20). Upon arriving at the place, Celespara was asked by Donor as to who fired. "Vivencio Celespara answered that he was the one who fired at Sotero Cantong." (21). All the 25 members of the group were provided with guns. Donor gave the witness a gun with only one bullet. (22). The witness was informed that the Japanese patrol used to stay almost every night in Bagasbas. (23).

3. Silvestre Rondina, 38, married, farmer, barrio Dapdap, Mondragon.—On October 2, 1942, he followed the accused in barrio Dapdap. "We were made to accompany Alberto Donor to find out if there were Japanese in that place." The witness was a volunteer guard and Donor "was our corporal." (27). They were then 25 volunteer soldiers. They were all armed with *bardug*. (28). Finding out that there were no Japanese, Donor told some of the soldiers to look for their companions so that they could go home. "While I was looking for our companions when I passed by the house of Sotero Cantong, there I saw two persons, Victorino Caranog and Vivencio Celespara. Vivencio Celespara was separating the nipa shin-

gles of the house of Sotero Cantong. I told them in this way, 'Let us go because Alberto Donor is in already.' They were conversing. Inasmuch as these two people did not heed my invitation as per order made by Alberto Donor, so he left the place. I scarcely walked 4 brazas when I heard a gunshot." (29). The shot was fired by Vivencio Celespara. He placed the barrel of his gun through the well of the house of Sotero Cantong. Sotero Cantong is married. (30). The wife of Sotero Cantong is now living with Vivencio Celespara. The witness knows that because he is living in the same barrio. They have been living as husband and wife for more than two years and they have one child. (31). The accused fired two shots. (33). The second shot was fired at about 20 meters from the house of Sotero Cantong. (34). All the members of the group were given one bullet each, while Vivencio Celespara was given four bullets. (35).

4. Justina Albaes, of legal age, married, housekeeper, barrio Agrupacion, Mondragon.—She is the mother of Vivencio Celespara. She does not remember where he was in 1942. He was a member of the guerrilla organization. (38). She learned about the fact that Catalina Cantong was killed the following day of October 2, 1942 "after the encounter between the members of the guerrilla and the Japanese soldiers. She was a pro-Japanese because every time the Japanese soldiers went to her place, the Japanese soldiers went to her house and drank tuba." (39). The people in Agrupacion were informed by the members of the guerrilla to evacuate. Catalina Cantong did not evacuate. Guillerma de los Reyes became a common-law wife of Vivencio Celespara in 1943. (40). Guillerma de los Reyes is the legitimate wife of Sotero Cantong. She became the paramour of the accused in October, 1943, "in our evacuation place." (41). Once the witness saw Japanese in the house of Catalina Cantong. They were laughing. (43). Sotero Cantong was a policeman under the Japanese regime. (44).

5. Vivencio Celespara, 20, single, farmer.—Previous to 1942 "I was a member of the guerrilla organization to fight against the enemy." His commander was Sergeant Donor. The group was composed of 25 members, armed with rifles. (45). "Two runners informed our leader Sergeant Donor that they saw Japanese soldiers in the house of Sotero Cantong and there were five Japanese drinking tuba. (47). At about 4 o'clock in the afternoon, we were ordered by Sergeant Donor to get ready because we are going to attack barrio Agrupacion where the Japanese were. Once the order was given we were lined up in our camp and there a distribution of arms and ammunitions was made. Each one of us were given a rifle and one bullet with further instruction that whoever among us would not be decided to fight, he will be the one to kill us.

And he further said that whoever among us would be able to kill a Japanese would be given a prize. So we left for Agrupacion. Upon our arrival at Agrupacion we were at the outskirts of the barrio and he instructed us not to get near to the barrio because it may be that the Japanese are there. After that we were distributed. Some were detailed in the house of Murillo, and others in the house of Sotero Cantong." (48). There were only three houses occupied at the time in Agrupacion. "While we were in the house of Sotero Cantong we were then distributed. Some were at the door, others at the window. I was then detailed at the door. Then later on we heard two gunshots and we heard a commotion in that house. While we were encircling the house of Sotero Cantong we were of course at a distance of 20 brazas. We noticed that it was somebody opening the window in the attitude of jumping through the window. So, upon seeing it, I immediately fired. Then I heard two shots in another portion of the barrio." (49). The one who fired towards the window was Silvestre Rondina, one of the witnesses for the prosecution. As to the persons in the house, "we thought they were Japanese. We ran away because we had no more bullets." Each soldier was given only one bullet. The witness had only one. He reported the incident to their chief. (50). "When we arrived near the mountain we were questioned by Donor as to how many have fired. Four of us reported to have fired. The rest of us told Donor that they did not fire because they were afraid." Those who fired were the accused, Silvestre Rondina, Victorino Caranog and another. They reported to Donor that they fired at the Japanese. "The following day, in the morning, we found out that we killed one but not a Japanese." A Filipino was killed. (51). Guillerma de los Reyes, wife of Sotero Cantong, went in 1943 to their place, and so they lived as husband and wife. In 1942 the accused was not courting yet Guillerma de los Reyes who was already married. They got acquainted in 1943. He used to see her often. On October 2, 1942, they were in all 25 guerrilleros. (53). It was a dark night on October 2, 1942. But the accused could see the people. He did not see any Japanese sentry guarding the house of Sotero Cantong. There was no truck. (54). Those who fired in the house of barrio lieutenant Murillo were Victorino Caranog and "another man from the interior." Nobody was killed. There was a casualty only in the house of Catalina Cantong. (55). The accused does not know who fired the fatal shot, whether he or Silvestre Rondina. (56).

Sotero Cantong, as rebuttal witness, said that it is not true that he was a policeman under the Japanese regime. It is not true that he ever invited Vivencio Celespara to become a Japanese policeman as stated by the mother of

the accused. (57). It is not true that in his house the Japanese were seen often entertained with tuba. "No Japanese came to my house. They simply went to the house of the barrio lieutenant Celestino Murillo." On October 2, 1942, the night of the killing, there were no Japanese in barrio Agrupacion. Catalina Cantong had never entertained in their house any Japanese. (58).

There is no question that Catalina Cantong was killed by appellant. The killing took place in the manner narrated by the witnesses for the prosecution. The uncorroborated testimony of appellant that he and his companions were assigned to surround the house of Sotero Cantong in the belief that there were Japanese therein and that he and three other companions fired from a distance when they saw that somebody was moving in the house in an attempt to jump and that in the next morning they found out that a Filipina was killed, cannot be taken seriously. Although the testimony of Sotero Cantong may be attributed to his grudge, because his wife was taken by the accused, there is no reason why the two other witnesses for the prosecution, Victorino Caranog and Silvestre Rondina, should falsely testify against appellant, their comrade-in-arms during the Japanese occupation.

Appellant is guilty of the crime of murder, qualified by treachery. The prosecution recommends that the death penalty be imposed upon appellant, alleging that the offense was committed with the aggravating circumstances of nocturnity and dwelling. There is no evidence that the accused has intentionally sought the cover of darkness of the night to prevent his being recognized, to avoid interference, or to obtain some other advantage. There is no evidence that the house wherein she was killed was the dwelling of the deceased. According to Sotero Cantong, he built it on the occasion of his wife's delivery. The mere fact that the deceased was at the time of the shooting taking supper in the house did not make her a dweller therein. No aggravating circumstance can be considered in this case.

The age of the accused had posed a legal problem. At the time he testified on March 22, 1947, he was 20 years old. The crime was committed on October 2, 1942. Therefore, he was then between 15 and 16 years old. That fact would entitle him to the benefits of article 80 of the Revised Penal Code. But this article presupposes that the accused is yet a minor. Because he is already of age, appellant can no longer be committed to the custody of the proper institution as provided in article 80 of the Revised Penal Code. It has been suggested that in the absence of a report from such an institution, the purposes of the law may be attained by the information as to the minor's conduct that can be given by prison officials or other competent persons who had been in a

position to observe the minor and, upon such suppletory information, the court may order the final release of the accused or impose upon him the corresponding penalty.

Appellant's specific case, however, would not require us to decide how the legislative hiatus in article 80 of the Revised Penal Code can be filled. The deficiency can be left to Congress for appropriate correction. Both witnesses for the prosecution and for the defense, without excluding appellant, agree that the latter has been living in adultery with Guillerma de los Reyes, wife of Sotero Cantong, since 1943, and such conduct precludes appellant from enjoying the right to be released provided by article 80 of the Revised Penal Code. The fact that he was a minor at the time he committed the offense can, however, be considered as a mitigating circumstance.

Accordingly, the appealed decision is modified and appellant is sentenced to an indeterminate penalty ranging from 10 years and 1 day, *prisión mayor,* to 17 years, 4 months and 1 day, *reclusión temporal,* to be served in the manner provided for the article 70 of the Revised Penal Code, and as recommended by the prosecution and in accordance with the ruling enunciated in People *vs.* Amansec, L–927 (45 Off. Gaz. [Supp. to No. 9], 51), to pay the heirs of the deceased the sum of ₱6,000 and the costs.

Moran, C. J., Pablo, Bengzon, Briones, and *Montemayor, JJ.,* concur.

Parás, Feria, and *Tuason, JJ.,* concur in the result.

Judgment affirmed.

[No. L–2211. December 20, 1948]

NATIVIDAD I. VDA. DE ROXAS, petitioner, *vs.* POTENCIANO PECSON, Judge of First Instance of Bulacan, MARIA ROXAS and PEDRO ROXAS, respondents.

1. CERTIORARI; EXECUTOR AND ADMINISTRATOR; STATUTES; APPOINTMENT OF SPECIAL ADMINISTRATOR; SECTION 1, RULE 81 AND SECTION 2 OF RULE 83 DO NOT APPLY.—It is well settled that the statutory provisions as to the prior or preferred right of certain persons to the appointment of administrator under section 1, Rule 81, as well as the statutory provisions as to causes for removal of an executor or administrator under section 653 of Act No. 190, now section 2, Rule 83, do not apply to the selection or removal of an special administrator.
2. ID.; ID.; SPECIAL ADMINISTRATOR, APPOINTMENT OF; DISCRETION OF COURT.—As the law does not say who shall be appointed as special administrator and the qualifications the appointee must have, the judge or court has discretion in the selection of the person to be appointed, discretion which must be sound, that is, not whimsical or contrary to reason, justice or equity.
3. ID.; ID.; ONE SPECIAL ADMINISTRATOR, SUFFICIENT.—As under the law only one general administrator may be appointed to administer, liquidate and distribute the estate of a deceased spouse, it clearly follows that only one special administrator

may be appointed to administer temporarily said estate, because a special administrator is but a temporary administrator who is appointed to act in lieu of the general administrator.

4. ID.; ID.; DUTIES OF ADMINISTRATOR.—The administrator appointed to administer and liquidate the exclusive property of a deceased spouse shall also administer, liquidate and distribute the community property, because the estate of a deceased spouse which is to be settled, that is, administered, liquidated and distributed, consists not only of the exclusive properties of the decedent, but also of one-half of the assets of the conjugal partnership, if any, which may pertain to the deceased, as determined after the liquidation thereof in accordance with the provisions of articles 1421 to 1424 of the Civil Code.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Claro M. Recto and *Francisco A. Rodrigo* for petitioner.
Estanislao A. Fernandez, Jr., and *Gerardo M. Alfonso* for respondents.

FERIA, *J.:*

This is a petition for certiorari filed against the respondent judge of the Court of First Instance of Bulacan.

The facts in this case may be summarily stated as follows: Pablo M. Roxas died leaving properties in Bulacan. The other respondents Maria and Pedro Roxas, sister and brother respectively of the deceased, filed on August 3, 1946, a petition for the administration of the latter's estate, in special intestate proceeding No. 1707 of the Court of First Instance of Bulacan, and Maria Roxas was appointed special administratrix upon an ex-parte petition. On August 10, 1946, the petitioner Natividad Vda. de Roxas, widow of Pablo M. Roxas, filed a petition for the probate of an alleged will of her deceased husband, and for her appointment as executrix of his estate designated in said will, and the petition was docketed as special proceeding No. 172 of the same court. In said will the deceased bequeathed one-half of his estate to his widow, the herein petitioner, and the other half to Reynaldo Roxas, an adulterous child 9 years old of the decedent. Upon agreement of both parties, the intestate proceeding No. 170 was dismissed and ordered closed by the court.

In view of the opposition to the probate of the will by the respondents Maria and Pedro Roxas, the petitioner was appointed on September 10, 1946, special administratrix and qualified as such over the objection of the respondents Maria and Pedro Roxas, who sought the appointment of Maria as such. The said respondents filed on October 21, 1946, a motion for reconsideration of the order of the court appointing the petitioner as special administratrix, with an alternative prayer that Maria Roxas be appointed as special co-administratrix, which motion was not acted upon.

After hearing on December 15, 1947, the respondent judge rendered a decision denying the probate of the will presented by the petitioner on the ground that the attesting witnesses did not sign their respective names in the presence of the testator, from which the petitioner has appealed, and the appeal is now pending.

On December 29, 1947, the respondents Maria and Pedro Roxas renewed their petition for the appointment of Maria Roxas as special administratrix or special co-administratrix, and on May 5, 1948, the respondent judge rendered his resolution appointing the petitioner Natividad I. Vda. de Roxas as special administratrix only of all the conjugal properties of the deceased, and Maria Roxas as special administratrix of all capital or properties belonging exclusively to the deceased Pablo M. Roxas.

The present petition for certiorari has been filed with this Court against the last order or resolution of the Court of First Instance of Bulacan based on the ground that the respondent judge acted in excess of the court's jurisdiction in appointing two special co-administratices of the estate of the deceased Pablo Roxas, one of the capital or properties belonging exclusively to the deceased, and another of his conjugal properties with his wife (now widow), the petitioner.

It is well settled that the statutory provisions as to the prior or preferred right of certain persons to the appointment of administrator under section 1, Rule 81, as well as the statutory provisions as to causes for removal of an executor or administrator under section 653 of Act No. 190, now section 2, Rule 83, do not apply to the selection or removal of special administrator. (21 Am. Jur., 833; De Gala *vs.* Gonzales and Ona, 53 Phil., 104, 106.) As the law does not say who shall be appointed as special administrator and the qualifications the appointee must have, the judge or court has discretion in the selection of the person to be appointed, discretion which must be sound, that is, not whimsical or contrary to reason, justice or equity.

There is nothing wrong in that the respondent judge, in exercising his discretion and appointing the petitioner as special administratrix, had taken into consideration the beneficial interest of the petitioner in the estate of the decedent and her being designated in the will as executrix thereof. But the respondent's subsequent act of appointing her as special administratrix only of the conjugal or community property, and Maria Roxas as special administratrix of the capital or exclusive property of the decedent, does not seem to be in conformity with logic or reason. The petitioner has or claims to have the same beneficial interest after the decision of the court disapproving the will, which is now pending on appeal, as she had prior to it, because the decision is not yet final and may be reversed by the appellate court.

Besides, even if the will is not probated, the widow in the present case would have, under the law, the right of usufruct over one-half of the exclusive property of the decedent, besides her share in the conjugal partnership. The beneficial interest required as a qualification for appointment as administrator of the estate of a decedent is the interest in the whole estate and not only in some part thereof. The petitioner being entitled to one-half in usufruct of all the exclusive properties of the decedent, she would have as much if not more interest in administering the entire estate correctly, in order to reap the benefit of a wise, speedy, economical administration of the estate, and not suffer the consequences of waste, improvidence or mismanagement thereof. The good or bad administration of a property may effect rather the fruits than the naked ownership of a property.

However, for the decision of the question involved in this proceeding it is not necessary for us to determine whether or not the respondent judge has acted with grave abuse of discretion in rendering the resolution complained of for the reasons just stated, in view of our conclusion that the respondent judge acted in excess of the court's jurisdiction in appointing two separate special administratices of the estate of the decedent: one of the conjugal or community property and another of the capital or exclusive property of the deceased Pablo M. Roxas.

According to section 2, Rule 75, taken from section 685 of the former Code of Civil Procedure, Act No. 190, as amended, "when the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered, and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse." That is the reason why, according to section 4, Rule 78, the "letters testamentary, or letters of administration with the will annexed, shall extend to all the estate of the testator in the Philippines," and section 6, Rule 79, provides for appointment of one administrator in case of intestacy, except in certain cases in which two or more joint, but not separate and independent, administrators may be appointed under section 3, Rule 82. Therefore the administrator appointed to administer and liquidate the exclusive property of a deceased spouse shall also administer, liquidate and distribute the community property, because the estate of a deceased spouse which is to be settled, that is, administered, liquidated and distributed, consists not only of the exclusive properties of the decedent, but also of one-half of the assets of the conjugal partnership, if any, which may pertain to the deceased, as determined after the liquidation thereof in accordance with the provisions of articles 1421 to 1424 of the Civil Code.

There is absolutely no reason for appointing two separate administrators, specially if the estate to be settled is that of a deceased husband as in the present case, for according to articles 1422 and 1423 of the Civil Code, only after the dowry and parapherna of the wife and the debts, charges, and obligations of the conjugal partnership have been paid, the capital or exclusive property of the husband may be liquidated and paid in so far as the inventoried estate may reach; and if the estate inventoried should not be sufficient to pay the dowry and the parapherna of the wife and the debts, charges and obligations of the partnership, the provision of Title XVII of the Civil Code relating to concurrence and preference of credits shall be observed. If two separate administrators are appointed as done in the present case, in every action which one of them may institute to recover properties or credit of the deceased, the defendant may raise the question or set up the defense that the plaintiff has no cause of action, because the property or credit in issue belongs to the class which is being administered by the other administrator, which can not be done if the administrator of the entire estate is only one.

As under the law only one general administrator may be appointed to administer, liquidate and distribute the estate of a deceased spouse, it clearly follows that only one special administrator may be appointed to administer temporarily said estate, because a special administrator is but a temporary administrator who is appointed to act in lieu of the general administrator. "When there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators thereupon appointed," (sec. 1, Rule 81). Although his powers and duties are limited to "collect and take charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator, and may sell such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased." (Section 2, Rule 81.)

In view of all the foregoing, we hold that the court below has no power to appoint two special administratrices of the estate of a deceased husband or wife, one of the community property and another of the exclusive property of the decedent, and therefore the respondent judge acted in excess of the court's jurisdiction in rendering or issuing the order complained of, and therefore said order is here-

by set aside, with costs against the respondents. So ordered.

Moran, C. J., Parás, Pablo, Perfecto, Bengzon, Briones, and *Tuason, JJ.,* concur.

Petition granted, order set aside.

[No. L-1702. December 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RUFO RONDA and JULIO GALLETO, defendants and appellants.

1. CRIMINAL LAW; MURDER; EVIDENCE; ALIBI AS A DEFENSE.—The defense of alibi set up by appellant R. R. is not plausible. It cannot prevail over the positive testimony of the eye-witnesses presented by the prosecution. As stated in the brief for the Government, it is incomprehensible that R would have travelled from Marinding, Lanao, to the municipality of Tudela, Misamis Occidental, merely to have his pants repaired when there were tailors in Marinding. Moreover, it was not impossible for R, who left the house in which he slept on November 3, 1946, "before the roosters alighted from their resting places", to have reached the place where E was killed in time to join J. G.
2. ID.; ID.; ID.; WITNESSES MAY NOT HAVE THE SAME NOTION.—Appellants' counsel have also stressed the failure of prosecution witnesses A. R. and V. I. to corroborate the testimony of P. D. that she heard shouts of people before the firing of the gun, *Held:* That witnesses may not have the same notions as to what are necessary to be detailed, but because it is not sufficient to destroy the important fact that they saw the occurrence in question.

Per PERFECTO, *J.,* concurring and dissenting:

3. NOT GUILTY AS PRINCIPAL.—Appellant G took no direct part in the killing of E, there is no evidence that he forced or induced R to kill E or cooperated in the killing by any act without which it would not have been accomplished; under Art. 17 of the Revised Penal Code, he cannot be held criminally liable as principal.
4. ACCOMPLICE.—The failure of G to impede or stop R from firing against E makes him guilty as accomplice as, by his passiveness, he cooperated in the execution of the offense.
5. WAYS OF COOPERATION.—The ways of cooperation contemplated by article 18 of the Revised Penal Code include, not only positive or affirmative action, but inaction, omission, or failure to do what should be done.
6. ANTI-SOCIAL THEORY.—The theory of indifference, of apathy, of nirvanic omission to act in the face of imminent danger, imperiling the fundamental rights of a fellow human being, when it is in one's power to avoid the disaster, is anti-social and repugnant to human nature.
7. BASIC HUMAN DUTIES.—While there are basic rights of which no person, without any distinction, can be denied, nature has imposed upon all human beings some correlative fundamental duties, failure in the fulfillment of which creates liabilities and responsibilities.
8. THE REALITY OF HUMAN SOLIDARITY.—The law should recognize the reality of human solidarity. No one can or may remain

indifferent to the sufferings or fates of others. No one should remain indifferent in the presence of oppression, aggression, or any attempt to trample down the fundamental rights of fellow human beings. To remain indifferent under such situation is criminal. To allow a felony or crime to be committed when it is in one's power to stop the offender, is to be an accomplice by cooperation.

APPEAL from a judgment of the Court of First Instance of Misamis Occidental. Villamor, J.

The facts are stated in the opinion of the court.

Manuel Y. Macias and *Cresenciano J. Gonzaga* for appellants.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Jose G. Bautista* for appellee.

PARÁS, *J.:*

After a careful examination of the record of this case in the light of the points raised in the appellants' brief, we are fully convinced that the Court of First Instance of Misamis Occidental did not commit any error in finding the said appellants, Rufo Ronda and Julio Galleto, the latter as inducer, guilty of murder and sentencing them to *reclusión perpetua* and its accessories, to indemnify jointly and severally the heirs of the deceased Gonzalo Elmedulan in the sum of two thousand pesos, and to pay the costs of prosecution.

In the morning of November 4, 1946, Gonzalo Elmedulan and his wife, Pahulia Dionson, went out to graze their carabaos on a piece of land located in Canibongan Proper, municipality of Tudela, Misamis Occidental. Hearing the sound of falling coconuts, they suspected the presence of some intruders. Gonzalo Elmedulan, followed behind by his wife, proceeded to the place of the noise. Upon arrival of Elmedulan, appellant Rufo Ronda, then armed with a carbine and hiding with appellant Julio Galleto behind the bushes known as *bahu-bahu,* fired several shots which hit Gonzalo Elmedulan eight times as a result of which the latter died on the spot. Pahulia Dionson, who came to her husband's side, embraced the latter who was yet able to reveal that he was shot by the appellants.

Two eyewitnesses were presented by the prosecution, namely, Alberto Revelo, who was hired and paid by Julio Galleto to gather coconuts, and Victoria Iyog who was then gathering guavas near the place in question. It is not pretended for the defense that said witnesses could have been prompted by any ulterior motives.

We cannot believe the allegation of appellant Julio Galleto that he fired his carbine at Elmedulan in self-defense. In the first place, the testimony of prosecution eyewitnesses Alberto Revelo and Victoria Iyog deserves more credence. In the second place, such allegation is hardly consistent with the very admission of Julio's wife that said appellant,

Elmedulan because I can no longer endure the trouble he has given us." In the third place, such allegation is rather disproved by the number of shots (not less than eight) that were fired against Elmedulan which, on the other hand, seems to indicate a determined act of aggression and a clear intention to kill. The fact that Elmedulan had allegedly caused Julio some trouble furnishes the motive on the latter's part for desiring to kill the former. It is of course immaterial whether, as contended by appellants' counsel, Elmedulan had no justification in trying to oust Julio from the land where the killing took place, because the same—even coupled with the alleged pugnacity of the Elmedulan—was likewise not a justification for Julio to murder Elmedulan. In the last place, it is highly improbable that the carbine could have come to Julio's possession in the manner alleged by him, namely, that it was given by an unknown guerrilla officer during the Japanese occupation at a time when there was a Japanese patrol in Julio's house. It is of common knowledge that carbines came to be seen only after the Americans had liberated the country; and even if such firearms in fact reached the hands of guerrillas in some way during the Japanese occupation, none would have passed them on to others, like appellant Julio Galleto who has not been proved to be a guerrilla, for the simple reason that the guerrillas themselves badly needed arms; and a sensible guerrilla would certainly not deliver a carbine during an occasion in which there was a Japanese patrol. Lastly, there is little or no weight in the corroborating testimony of Julio's wife, inasmuch as she admitted that she was busy in the kitchen and turned around only after hearing the shots, thus seeing Elmedulan already dead.

The defense of alibi set up by appellant Rufo Ronda is not plausible. It cannot prevail over the positive testimony of the eyewitnesses presented by the prosecution. As stated in the brief for the Government, it is incomprehensible that Rufo would have travelled from Marinding, Lanao, to the municipality of Tudela, Misamis Occidental, merely to have his pants repaired when there were tailors in Marinding. Moreover, it was not impossible for Rufo, who left the house in which he slept on November 3, 1946, "before the roosters alighted from their resting places", to have reached the place where Elmedulan was killed in time to join Julio Galleto.

Appellants' counsel have also stressed the failure of prosecution witnesses Alberto Revelo and Victoria Iyog to corroborate the testimony of Pahulia Dionson that she heard shouts of people before the firing of the gun. This is of no moment, not only because witnesses may not have the same notions as to what are necessary to be

important fact that they saw the occurrence in question.

The appealed judgment, being conformable to the facts and the law, is affirmed with costs. So ordered.

Moran, C. J., Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

PERFECTO, *J.,* concurring and dissenting:

According to the witnesses for the prosecution, Alberto Revelo and Victoria Iyog, the victim Gonzalo Elmedulan was shot to death with a carbine by Rufo Ronda. Attracted by the sound of falling coconuts, Elmedulan went to the place from which the sound came and where appellants were, and when he was about several meters away, Ronda leveled his carbine against him and fired several shots, hitting him eight times, as a result of which Elmedulan died on the spot. Julio Galleto took absolutely no participation in the killing, as he just remained behind Ronda, holding the latter's back.

Upon the facts thus proved by the prosecution, Julio Galleto cannot be held guilty as co-author of the crime. He took no direct part in the execution of the act resulting in the killing of Elmedulan; there is absolutely no evidence that he directly forced or induced Ronda to kill Elmedulan; and he did not cooperate in the commission of the offense by any act without which it would not have been accomplished, the three instances in which he could be declared criminally liable as principal under article 17 of the Revised Penal Code.

Julio Galleto should, however, be held guilty as an accomplice, by his failure to impede or stop Ronda from firing against Elmedulan, with which failure he cooperated in the execution of the offense.

"ART. 18. *Accomplices.*—Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts."

To cooperate is to act or operate jointly with another or others, to concur in action, effort, or effect, to contribute, to combine, to tempt, to conduce. Generally, cooperation implies active, positive or affirmative action, such as the performance of an act intended to help or assist in the carrying out of a common purpose. But the concept does not exclude cooperation in action, by omission, by failure to do what should be done.

The theory of indifference, of apathy, of nirvanic omission to act in the face of imminent danger, imperiling the fundamental rights of a fellow human being, when it is in one's power to avoid the disaster, is anti-social and repugnant to human nature. While there are basic rights of which no person, without any distinction, can be denied, nature has imposed upon all human beings some correl-

ative fundamental duties, failure in the fulfillment of which creates liabilities and responsibilities.

In the instant case granting Julio Galleto all the benefits of any legal presumption, his failure to prevent the killing of Elmedulan makes him an accomplice in the crime. Under the circumstances, it was his absolute duty not to remain indifferent. He had full awareness of the fact that Ronda was about to kill Elmedulan. It was in his power to stop Ronda from achieving his murderous objective. He could have wrested the carbine from Ronda or, at least, disturbed the aim, so that the shots could not hit the mark. He was at the back of Ronda, he was holding the back of Ronda and, therefore, in the most advantageous position to pull or to push Ronda's arms or body to either side, considering that the slightest movement or inclination of Ronda's body or arms would have been enough to save Elmedulan's life. Under the circumstances, Galleto could not avoid the dilemma of allowing or not allowing Elmedulan to be killed. But by his failure to exercise his power to stop the killing, he actually cooperated in the execution of the killing.

It is high time that the law should recognize the reality of human solidarity. No one can or may remain indifferent to the sufferings or fates of others. No one should remain indifferent in the presence of oppression, aggression, or any attempt to trample down the fundamental rights of fellow human beings. To remain indifferent under such situations is criminal. To allow a felony or crime to be committed when it is in one's power to stop the offender is to be an accomplice by cooperation.

For all the foregoing, we concur in the affirmance in the sentence against Rufo Ronda but we vote, as regards Julio Galleto, for the modification of the appealed decision by finding him guilty of murder as an accomplice and by reducing his penalty to an indeterminate period of from eight years and one day of *prisión mayor* to fourteen years, eight months and one day of *reclusión temporal.*

Judgment affirmed.

[No. L-1703. December 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ERNESTO CASTILLO and QUINTIN CASTILLO, defendants and appellants.

1. CRIMINAL LAW; ROBBERY IN BAND WITH RAPE; EVIDENCE; DELAY IN PROSECUTION.—Counsel for appellants contends that the theory of the prosecution is untenable because it took the offended party three days before denouncing the offense to the authorities, reference being made to the testimony of detective inspector B to the effect that P. D. and H. A. reported the incident on April 4, 1947. *Held:* That the

criticism is obviously without merit. Spontaneity is sufficiently demonstrated by the fact that upon arrival at the place where H. A. was kept tied, P told the former that she had been raped by four men and by the fact that P's husband reported the matter to the mayor on the day following the incident. The observation that P's husband could not probably have made such report in view of his admitted illness is of no moment, as there is nothing in the record to show that said illness was then of such a nature as to have completely disabled him.

2. ID.; ID.; ID.; IMMATERIAL CONTRADICTION OF TESTIMONIES.—Appellant's counsel also calls attention to an alleged material contradiction in the evidence for the prosecution, namely, that while P testified that she was abused by only four men, detective inspector B stated that P's report was to the effect that she was robbed and raped by five men. It is at once noteworthy that the latter testimony refers both to the robbery and to the rape, and cannot be said to have particularized the matter of rape.

3. ID.; ID.; ID.; ORDINARY OBSERVATION WHEN DOES NOT HOLD TRUE.—It is also argued for the appellants that it is hard to believe that, as claimed by P, while she was being ravished by one of the malefactors, the others remained as on lookers. In other words, it is maintained that one would not have carnal knowledge of a woman in the presence of others. *Held*: That this should be true under normal conditions but not when, as in this case, the presence or cooperation of another or others was even necessary for the consummation of a common evil design. Indeed, such presence might have given the malefactors the assurance of safety.

4. ID.; ID.; ID.; WHEN TESTIMONIES ARE NOT IN CORROBORATION.—The circumstance (also capitalized by appellants) that H. A. failed to corroborate P on the vital details of her testimony, far from indicating a weakness in the theory of the prosecution, shows lack of fabrication on their part. Indeed, H could not touch all the points mentioned by P, as he was handled differently by the malefactors.

5. ID.; ID.; ID.; ALIBI AS A DEFENSE.—The appellants have set up the defense that from March 30 to April 5, 1947, they were in barrio Trangka, Bay, Laguna, a defense which certainly cannot prevail over the testimony of P. D. and H. A. who positively identified the appellants.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Geminiano F. Yabut for appellants.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Luis R. Feria* for appellee.

PARÁS, *J.*:

Ernesto Castillo, Quintin Castillo, Leon Reyes, Cornelio Añonuevo and Emeterio Añonuevo were accused in the Court of First Instance of Laguna of the crime of robbery in band with rape. After trial (which did not include Cornelio and Emeterio Añonuevo who were then still at large), Ernesto Castillo and Quintin Castillo were found guilty as charged, while Leon Reyes was found guilty only

of robbery in band, and the first two were accordingly sentenced to life imprisonment, and the latter to an indeterminate penalty of from 8 years and 1 day to 12 years, *prisión mayor*. In addition the three were sentenced to indemnify the offended party in the sum of ₱101.90 and to pay each one-fifth of the costs. Only Ernesto and Quintin Castillo have appealed.

The evidence for the prosecution has conclusively proved that at about midnight on April 1, 1947, Paula Diana, who was still awake in her house situated in barrio Sto. Niño, City of San Pablo, Laguna, heard her dogs barking. Peeping through the window, Paula saw the presence of five persons armed with rifles and pistols, from whom the following threat came: "Don't move or you will be killed." Thereupon Cornelio Añonuevo and Emeterio Añonuevo entered the house and ordered the male inmates to go down. Paula had to wake up his step-father (Herman Alvarez), then still asleep, and the latter was dragged downstairs by Emeterio Añonuevo. Upon Emeterio's return, Cornelio Añonuevo ordered, upon threat of death, Paula to open her wardrobe from which Cornelio took several belongings of Paula. After going downstairs, Cornelio returned to the house and, at the point of his revolver, forced Paula to go down where she saw Ernesto Castillo, Quintin Castillo and Leon Reyes. Cornelio and Emeterio Añonuevo then took Paula to a place about 200 meters away from her house where, after slapping, boxing and kicking Paula, Cornelio and Emeterio successively were able to ravish her by means of threats and intimidation. Coming to the scene after Cornelio had whistled, Ernesto and Quintin Castillo took their turns in forcibly having carnal knowledge of Paula. After these proceedings, Paula was ordered to go home, but not without the admonition not to make any revelation. Paula found her step-father near the fence of her house with hands tied behind his back. No sooner had Paula untied his step-father than four shots were heard which marked the disappearance of all the malefactors. Leon Aragon (Paula's husband who was then in the house of his cousin Isaac Gutierrez for treatment of his sickness) went to his wife and took the latter with him to the house of Isaac.

Counsel for appellants contends that the theory of the prosecution is untenable because it took the offended party three days before denouncing the offence to the authorities, reference being made to the testimony of detective inspector Brion to the effect that Paula Diana and Herman Alvarez reported the incident on April 4, 1947. The criticism is obviously without merit. Spontaneity is sufficiently demonstrated by the fact that upon arrival at the place where Herman Alvarez was kept tied, Paula told the former that she had been raped by four men and by the fact

that Paula's husband reported the matter to the mayor on the day following the incident. The observation that Paula's husband could not probably have made such report in view of his admitted illness is of no moment, as there is nothing in the record to show that said illness was then of such a nature as to have completely disabled him.

Appellant's counsel also calls attention to an alleged material contradiction in the evidence for the prosecution, namely, that while Paula testified that she was abused by only four men, detective inspector Brion stated that Paula's report was to the effect that she was robbed and raped by five men. It is at once noteworthy that the latter testimony refers both to the robbery and to the rape, and cannot be said to have particularized the matter of rape.

It is also argued for the appellants that it is hard to believe that, as claimed by Paula, while she was being ravished by one of the malefactors, the others remained as onlookers. In other words, it is maintained that one would not have carnal knowledge of a woman in the presence of others. This should be true under normal conditions but not when, as in this case, the presence or cooperation of another or others was even necessary for the consummation of a common evil design. Indeed, such presence might have given the malefactors the assurance of safety.

The circumstance (also capitalized by appellants) that Herman Alvarez failed to corroborate Paula on the vital details of her testimony, far from indicating a weakness in the theory of the prosecution, shows lack of fabrication on their part. Indeed, Herman could not touch all the points mentioned by Paula, as he was handled differently by the malefactors.

The appellants have set up the defense that from March 30 to April 5, 1947, they were in barrio Trangka, Bay, Laguna, a defense which certainly cannot prevail over the testimony of Paula Diana and Herman Alvarez who positively identified the appellants. At any rate, it is not pretended that the witnesses for the prosecution had any motive in falsely incriminating the appellants, and no cogent reason exists why we should overrule the lower court which saw and heard all the witnesses testify.

Being in accordance with the facts and the law, the appealed judgment is affirmed, it being understood, however, that the appellants shall in addition indemnify jointly and severally Paula Diana in the sum of one thousand pesos. So ordered, with costs.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified, indemnity increased.

[No. L-1845. December 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* TOMAS CARAOS, PASCUAL BIHIS, FLORENCIO BIHIS, MARTIN MARANAN, PEDRO ARRIOLA and ANTONIO DAÑO, defendants and appellants.

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; EVIDENCE; UNCONVINCING EVIDENCE FOR THE DEFENSE.—The evidence offered by the defense appears to be unconvincing and has not detracted any force from the unbiased, positive, and forthright testimonies of V and A, who had actually witnessed the perpetration of the crime. The fact that the witnesses for the defense joined G. A. with an unknown person as one of the killers of the deceased has not much weight considering that G. A. is already dead, and to point him as one of the killers may give some color of veracity to said witnesses' declarations that they had also seen the killing.

2. ID.; ID.; ID.—Aside from the many contradictions among the witnesses for the defense, the theory of the prosecution appears to be corroborated by the admissions made by P. A. the next day after that of the crime when he was investigated, and by some incidents at the wedding party. While some witnesses for the defense said that the accused did not drink wine at the wedding party, others said that they did. While some denied that P. B. uttered any menacing words against those who would not obey him, others said that he did.

3. ID.; ID.; ID.—Appellants tried to convey the idea that G. A. killed E as a reprisal because of a conflict between them in the buying of a horse. But according to the same appellants, the difference was amicably patched up, as E allowed G. A. to have the horse and the settlement took place hours before the killing.

APPEAL from a judgment of the Court of First Instance of Batangas. Victoriano, J.

The facts are stated in the opinion of the court.

Luis Atienza Bihis for appellants.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Luis R. Feria* for appellee.

PERFECTO, *J.:*

The six appellants are charged with the crime of robbery in band with homicide committed in barrio Subic, Lemery, Batangas, on December 3, 1945. All of them were found by the lower court guilty of robbery with homicide and appealed.

The record of this case is one of the most voluminous. Many witnesses testified both for the prosecution and for the defense and the whole transcript of the stenographic notes is spread on more than 1,000 pages.

For a clear idea of the effect of the testimonies, hereunder is given the substance of the declarations of the witnesses:

PROSECUTION

1. Ignacia Sangalang, 59, married, Bihis, Taal.—Elpidio Promentilla is her son. (3). His business was to buy and sell horses. At 7 a. m. on December 1, 1945 he left home with ₱4,000 to buy horses in Bayuyungan, Talisay. The witness gave him ₱4,000 and also ₱18 for expenses, and he brought with him a watch and a ring valued respectively at ₱150 and ₱60. He promised to return on December 3, 1945, but he never returned. (5). She learned from his companions Antonio Vitas and Galicano Abanico that he was killed. (6). Elpidio was 30 years old, single. He started in the business since he was 18. (7). Pascual Bihis and Florencio Bihis knew that Elpidio was engaged in the horse business. They knew him since before the war. (18).

2. Antonino Lontoc, 48, married, president of the 9th Sanitary Division, Lemery.—He made a post-mortem examination of the body of Elpidio Promentela. (19). Exhibit A is his report of it. Elpidio died due to internal hemorrhage, shock, and cerebral hemorrhage, as a result of bullet wounds. (20). There were three wounds, one in the head and two in the body. The bullets were fired at close range, as there were burns in the body. (21). There were contusions in the body which might have been caused by the deceased's fall. (22).

3. Armando Valdes, 28, married, lieutenant, MPC, Sta. Rita, Batangas.—He had an opportunity of investigating the case on January 4, 1946. When accused Dominador Cagitla, Urbano Daño and Pedro Arriola escaped from the jail, the warrant of arrest Exhibit B was already in his office when he arrived there. Accused Tomas Caraos, Martin Maranan and Pedro Arriola and Antonio Daño were arrested on August 16, 1946. (27). Dominador Cagitla, Pedro Arriola and Antonio Daño escaped from jail on February 12, 1946. They were rearrested on August 16, 1946. (28).

4. Antonio Vitas, 40, married, manufacturer of sawali, Buli, Taal.—During the first week of December, 1945, he saw Elpidio Promentilla in a wedding celebration in barrio Binibiloan, Lemery. It was a Sunday, December 2, 1945. (31). Among those present were Tomas Caraos, Pascual Bihis, Antonio Daño, Pedro Arriola, Dominador Cagitla, Martin Maranan, and Florencio Bihis. Elpidio arrived at 2.30 p.m. (32). The accused arrived at 8.30 a.m. on Monday, December 3, 1945. They came together. The witness was the cook. On Monday morning, he saw Elpidio in the house. (33). He saw him before the arrival of the accused. The accused drank wine. Pascual Bihis was always telling his companions: "You son of a bitch; I will shoot you if you do not obey me." The witness heard it twice. All the accused were armed with .45

caliber revolvers. (34). The deceased, the witness and the accused left at 2.30 p.m. on December 3. The deceased was carrying money, a ring and a watch. (35). The bride and the bridegroom also left. All went to the shore, including Galicano Abanico and the accused and many others. (36). As no banca was found, Elpidio invited the witness to go home on foot, and they left the shore with Galicano Abanico at 3:30 in the afternoon. (37). The accused remained. When the witness, Elpidio and Galicano Abanico arrived at a place of barrio Subic, eight persons overtook them. Guillermo Atienza who was ahead aiming his revolver at the trio said: "Do not go ahead, otherwise you will die." At that moment Elpidio was surrounded by Tomas Caraos, Antonio Daño, Pedro Arriola, Florencio Bihis, Martin Maranan, and Dominador Cagitla. (38). The witness ran because he heard a shot. At a distance of about 30 meters he turned his face and he saw that the malefactors were searching the garments of Elpidio. In all, three shots were fired. The first one was fired by Pascual Bihis. "We went to the barrio lieutenant to report the incident." (39). Because they had to walk on water reaching their breasts, Elpidio had to undress and remain in drawers and undershirt. He had his khaki dress rolled and he had in it his ₱4,000, the watch and the ring. The witness asked him, concerning his money "Compadre, why are you carrying much money?" "Ah, it is because I wanted to buy horses, but I failed to buy." The deceased took the money from a pocket and placed it in one fold of his pant which he rolled. The money was wrapped in paper. (40). The witness saw the money before it was wrapped. They had to undress from the shore because they had to walk through water. (41). At the time the deceased took his money and wrapped it in paper, the accused were present. After the deceased fell down, the bundle of his dress was searched by Pascual Bihis, Tomas Caraos, Dominador Cagitla and Guillermo Atienza. (43). All the accused made the search. (43). After the search the witness and his companions were pursued by the accused and they had to run. The place was uninhabited. There was no house. (44). The place was somewhat hilly, there were many trees, and the way was zigzagging. The accused had their revolvers unholstered. (45). The next day the witness reported the case to the justice of the peace of Lemery. The *teniente del barrio* went with the witness to see the cadaver at about 10 p.m. The barrio lieutenant searched the body and he did not find anything. (46). The money, the watch and the ring were gone. (47). Before coming home the witness went to the house of the deceased and reported to his parents that their son was killed. He was accompanied by Galicano Abanico. They

arrived at the house at 4 o'clock in the morning. (48). When the witness saw the cadaver, it carried only the drawers Exhibit C–4. It was wounded in the right ear and in the abdominal region. (49).

Antonio Vitas, after having been recalled to the witness stand, testified that he arrived at the wedding house in Bilibinuang before Elpidio Promentela. He arrived at 2.30 in the afternoon of Suday. (1001). There Elpidio said to him that he came from barrio Bayuyungan, Talisay, and that he came to buy horses. (1004). Upon seeing him carrying much money, including bank notes of ₱20 and ₱50, he asked him why he was carrying such money, and the deceased answered that he was about to buy horses but he was not able to do so. (1005). The witness asked him how much he was carrying and the deceased said he was carrying ₱4,000. (1006). The witness knows Jose Atienza of barrio Bolbok. (1013). When the witness and his companion, Galicano Abanico, ran away because of the shooting, they found Jose Atienza on the way and the latter asked them what happened and "we told him that these malefactors killed Elpidio Promentilla." (1014). When the witness went to the barrio lieutenant to report the killing, Juan Garcia was not with him. (1016). The witness and his companion did not find the barrio lieutenant but the assistant barrio lieutenant, Avelino Panganiban, to whom they reported that they were held up by eight persons, not by two. (1016). When the witness returned from Taal with MPs, they found accused Dominador Cagitla, Pedro Arriola and Antonio Daño standing before a house. (1030). They were questioned by the MPs, and Pedro Arriola said that he was in the place "because his companions ordered him to watch and kill us so that we cannot report the incident to the authorities." Antonio Daño said nothing. (1031). Dominador Cagitla said that he was a rower. Pedro Arriola himself accompanied the MPs to the place of the cadaver. (1032). Arriola said that they killed Elpidio but he did not state the motive for the killing. (1034). When the witness returned to the place of the incident with the assistant barrio lieutenant, they did not see any money, watch, or ring. (1039). The assistant barrio lieutenant, examined the body of the deceased. (1040). At first Pedro Arriola said to the MPs that he was a rower, "but I said that no and that they were companions of the individuals who held up Elpidio Promentilla. After other questions, he said the truth that they were in the place because their companions ordered them to watch us and kill us so that we cannot report the incident to the authorities. The MPs asked about his arms and Pedro Arriola answered that Pascual had taken them." (1041). The witness has known Pascual Bihis for more than a year. (1044). He is the cousin of Florencio Bihis. He

has known Tomas Caraos for more than 10 years. There was no personal resentment between him and Tomas Caraos. (1045). When the MPs went to the place of the incident with Pedro Arriola and the witness, Dominador Cagitla and Antonio Daño were left under guard in San Nicolas. (1053). They went to the place at 9.30 a.m. (1055). When Pedro Arriola was asked by the MPs where his companions were, he said that they were in the north and he referred to Pascual Bihis, Tomas Caraos and Florencio Bihis. (1064).

5. Agapito Tirones, 25, single, merchant, Bañadero, Tanauan, Batangas.—He knows accused Martin Maranan as one of those who held him up. He filed a complaint against Maranan and companions in Talisay. (1065). While the case was pending in Talisay, Gaudencio Bihis, a relative of Pascual and Florencio Bihis, "told me that I should consider settling the case amicably because his men mistook me for Elpidio Promentilla, whom they wanted to waylay." (1066). Gaudencio approached the witness twice some two weeks after he filed the complaint. He said "I should pardon those who waylaid me because they received information to the effect that Elpidio Promentilla was already murdered." (1067). The witness was held up by Martin Maranan on November 13, 1945. (1068). Gaudencio Bihis told the witness that he was the one who induced the killing of Elpidio Promentilla. (1071).

6. Juanito S. Atienza, 39, married, chief of police, Lemery.—He got accused Pedro Arriola, Antonio Daño and Dominador Cagitla on December 4, 1945. They were brought by American MPs and Taal policemen. (1073). They escaped from jail on February 10, 1946, and Dominador Cagitla is still at large. (1074). The provost marshal told the witness that the six accused surrendered. (1076).

7. Consorcio Noche, 33, married, merchant, Taal.—On December 4, 1945, he was a policeman of Taal. (1084). At 8 o'clock in the morning of Tuesday, December 4, 1945, he was called by his chief, Antonio Casanova, Sr., and "instructed me to go with Antonio Vitas to barrio San Nicolas, where, according to him the three companions of the persons who held them up where then." The witness went with policeman Vicente Laharzo, two Filipino MPs and five American MPs "because, according to Antonio Vitas, those were armed bandits and because we were two only, we were afraid that we cannot tackle them and because according to Vitas, one of his companions was killed." (1085). They found behind a store in barrio San Nicolas Antonio Daño, Pedro Arriola and Dominador Cagitla, who were pointed out by Antonio Vitas. (1086). The three were investigated by the MPs and asked if it was true that they were companions of those who held up Elpidio Promentilla, Galicano Abanico

and Antonio Vitas. At first they denied, but after several questions "Pedro Arriola confessed that they were companions of those who held up Elpidio Promentilla." (1087). The three were asked by the MPs why they were in the place and "they answered saying that they were ordered by their five companions to watch Antonio Vitas and companions and to kill them if they so see them." Their five companions were Pascual Bihis, Tomas Caraos, Martin Maranan, Florencio Bihis and Guillermo Atienza. They were instructed to watch and kill Antonio Vitas and Galicano Abanico. (1088). The witness knows the five accused. He knows Pascual Bihis and Tomas Caraos because they were already jailed in Taal. The MPs requested Pedro Arriola to lead them to the place of the incident. The witness and Vicente Leharzo remained to watch Antonio Daño and Dominador Cagitla until they were taken to the municipal building of Taal. (1089). When the three accused were found by the MPs, Antonio Daño had in his possession a pen-knife. (1092). The three accused, when asked about their arms, said that they were taken by their companions who were at the other side of the river. (1093). They said that their companions had taken their revolvers. (1094). When Pedro Arriola admitted his participation in the killing, no duress was used by the MPs. It was Antonio Vitas who raised his voice when the accused denied at first. Pedro Arriola is the only one who confessed. (1098). Antonio Daño and Dominador Cagitla did not confess. (1099).

8. Galicano Abanico, 29, widower, sawali manufacturer, barrio Buli, Taal.—On the morning of December 2, he left barrio Buli to attend a wedding at barrio Bilibinuang, Lemery. He was accompanied by Antonio Vitas and some neighbors of Cultihan. They arrived at Bilibinuang at about 2 in the afternoon. (1100). Elpidio Promentilla arrived at the wedding at about 2.30 in the afternoon. (1101). Eight men, among whom were the six accused, were continuously drinking wine at the wedding. (1102). The eight were Pedro Arriola, Antonio Daño, Martin Maranan, Tomas Caraos, Pascual Bihis, Florencio Bihis, Dominador Cagitla and Guillermo Atienza. Guillermo Atienza was killed, and another is at large in the mountain. (1103). Pascual said to the group: "If you son of a bitch don't obey, I'll kill you by shooting." The witness left the place at about 2 o'clock in the afternoon of December 3. (1104). He was accompanied by Antonio Vitas, Elpidio Promentilla and others. They went to the shore of Bilibinuang to look for a boat. Because they found none, he, Antonio Vitas and Elpidio Promentilla agreed to go walking to Subic. (1105). Before starting, they took off their pants and shirts, as they had to walk by the beach for they did not want their clothes to be wet. After taking off his pants, Elpidio took from his drawers

the money and placed it in a fold of his pants. They were held up by eight men. (1106). One of the eight went ahead with a .45-caliber revolver in his hand saying: "Don't go ahead because you will die." The seven others had also their .45-caliber revolvers unholstered. Then a shot was heard "and Antonio Vitas and I ran away." Three shots in all were fired. When the first shot was fired, the witness' group was about four meters from the eight assailants. (1107). While the witness and Antonio Vitas were running, they heard two other shots. At about 30 meters, when they looked back they saw that Elpidio Promentilla was dead. The assailants were searching a bundle of Elpidio Promentilla. There were no other persons in the place. There was no house. The witness pointed accused Pascual Bihis, Tomas Caraos, Antonio Daño, Florencio Bihis, Pedro Arriola and Martin Maranan among the eight who held them up. (1108). Before the incident the witness knew already Pascual Bihis, Tomas Caraos and Antonio Daño. The assailants who were absent from the court were Guillermo Atienza and Dominador Cagitla. He and Antonio Vitas reported the killing to the barrio lieutenant, saying that they were held up by those eight men. They were accompanied by the barrio lieutenant to the place of the killing. The barrio lieutenant searched the body of Elpidio Promentilla. There was no money, ring or watch. (1110). During the wedding the witness saw Elpidio carrying a watch and a ring. He was carrying them when they were walking by the beach. (1111). The witness and Antonio Vitas advised Elpidio's parents about the killing. (1112). Elpidio's mother swooned. When the witness and Antonio Vitas and many others intended to go to the place of the killing on December 4 to recover the cadaver, they saw in San Nicolas accused Pedro Arriola, Antonio Daño and Dominador Cagitla. (1113). Upon seeing them, Antonio Vitas ordered the truck to turn back to call the authorities, and Antonio Vitas returned with MPs and policemen from Taal. (1114). The witness professes the Roman Catholic Apostolic religion. When a person dies he is dead. He does not believe in another life because none of those who died has returned. (1118). When the MPs asked Pedro Arriola, Antonio Daño and Dominador Cagitla why they were in the place, the first said that it was because Pascual Bihis ordered them to watch Antonio Vitas and the witness and kill them so that they cannot denounce the killing of Elpidio Promentilla. (1131). Arriola said that their companions were at the north side of the river. (1132). He said that their arms were taken by Pascual. (1133).

9. Sotero Promentilla, 35, married, merchant, Batangas.—He is the brother of the deceased Elpidio, who on

December 14, 1945 was barrio lieutenant of barrio Bihis, Taal. (56). He was a horse merchant, and used to buy race horses. He left home on December 1, 1945. (59). He went to barrio Bayuyungan, Talisay, carrying with him ₱4,000 to buy horses besides money for expenses. He carried a ring and a watch. The witness helped in arranging the money before his brother left. (58). His brother never returned. He died. (59). The deceased was accompanied by Antonio Vitas and Galicano Abanico. (61). Upon hearing of the death of his brother he took a cart to recover the cadaver. (62). He was accompanied by Antonio Vitas and Galicano Abanico and others. (63). Pedro Arriola, Antonio Daño and Dominador Cagitla, were investigated by Filipino and American MPs. There were five Americans and two Filipinos. (64). Pedro Arriola told the truth, that they were eight, mentioning Florencio Bihis, Pascual Bihis, Tomas Caraos, Guillermo Atienza, and Martin Maranan. He said that the three were in sitio San Nicolas, because they received order from their companions to pursue and kill the companions of the deceased so that they could not be witnesses. (65). The three accused escaped from jail. (69). The witness, through the mediation of Gaudencio Bihis, was able to convince accused Pascual Bihis, Martin Maranan, Pedro Arriola, Antonio Daño, and Tomas Caraos to come with him to the MPs, after a promise that they would not be maltreated. (69–70). When the accused were arrested, Atty. Atienza intervened to settle the case. Attorney Atienza is a near relative of some of the accused. (71). While detained, Florencio Bihis wrote to Gaudencio Bihis the letter Exhibit B which has fallen into the hands of the MPs. (72). When Pedro Arriola was investigated by the MPs the witness was present. (84). He said that he was in San Nicolas because he and two companions received orders to kill Antonio Vitas and Galicano Abanico so that the two would not reveal the killing to the relatives of the deceased. Arriola said that they were eight. (85). Dominador Cagitla and Antonio Daño were present when Arriola admitted their mission to kill Galicano Abanico and Antonio Vitas. (86). They did not admit or deny what Arriola said. (87). Pascual Bihis, Francisco Bihis and Gaudencio Bihis are distant relatives of the witness. (92). When counsel for the accused attempted to settle the case, the witness proposed a settlement in the amount of ₱4,000, in order to induce Gaudencio Bihis who was still at large, to surrender to the authorities, as witness' life was in danger. (93). He was being offered the sum of ₱1,000, although he was not asking for it. (96). The witness asked why was he to accept ₱1,000, when the money lost was ₱4,000.

DEFENSE

1. Jose Atienza, 29, married, farmer, Bolbok, Taal.—On December 2, 1945, he attended the wedding of his cousin Marcelino Maala in Lemery. He left the place of Bilibinoang, Lemery on December 3, 1945 at four o'clock in the afternoon. His companions were Antonio Vitas, Galicano Abanico, Juan Garcia, Elpidio Promentilla, Angel Semaña, and they intended to return home by land. (105–106). They arrived at barrio Subic at six. He saw when Elpidio Promentilla was killed by several individuals. He knows accused Florencio Bihis, Pascual Bihis and Tomas Caraos. Neither they nor the three he does not know were in the group of persons who killed Elpidio Promentilla. (107). Those who killed Elpidio were two, Guillermo Atienza and another unknown to the witness. At the time, Elpidio was accompanied, not only by Antonio Vitas and Galicano Abanico but by the witness, Juan Garcia and Angel Semaña. (108). It is a lie that the six accused and Guillermo Atienza and Dominador Cagitla each carried a .45-caliber revolver. The witness was with Antonio Vitas and Galicano Abanico when the latter reported the killing to the barrio lieutenant. Besides the witness, Juan Garcia and Angel Semaña also went with them. The person to whom they reported is Avelino Panganiban. (109). They told him that two persons held up and killed Elpidio. (110). It is not true that Antonio Vitas and Galicano Abanico returned to the place of the killing, because all of them went home from the house of the barrio lieutenant. The witness saw the six accused at the wedding. They were left in the house of the wedding when the witness and his companions left the place. (112). It is not true, as testified by Antonio Vitas and Galicano Abanico, that the men who killed Elpidio Promentilla searched his body and took away from him a watch, a ring and ₱4,000. (113). When the witness went to attend the wedding, he went with many companions, but he does not remember the name of anyone. Some of them were his neighbors. (114). He remembers only Angel Semaña, Juan Garcia and Galicano Abanico. He was the only one who came from barrio Bolbok, the others came from other barrios. (115). He does not know the name of the bride. Her nickname is Juling. When Elpidio Promentilla was held up by Guillermo Atienza, the witness was with him. (117). The witness, Galicano Abanico, Antonio Vitas and Juan Garcia were all at the side of Elpidio. Guillermo Atienza and his companions stopped them. Three shots were fired, two of them aimed at Elpidio. (118). When the first shot was fired, the witness was ten meters away from Elpidio. Galicano Abanico and Antonio Vitas were standing. Then they ran. At a distance of twenty meters

they stopped and they saw that the shots were fired against Elpidio. (119). When they were held up, the witness was in a group with Juan Garcia, Antonio Vitas, Elpidio Promentilla and others who were at his side. (120). The witness had not seen Elpidio carrying money, a watch or a ring. (122). The witness knows the accused Martin Maranan. (123). Although the witness knows the parents of Elpidio, the Chief of Police and the Mayor of Lemery, he did not report to any of them the killing, as "my companions were already free." He revealed it only to members of his family. (125). When they were held up, their assailants ordered them: "You go. Leave Elpidio here. If you don't go, even you will die." (131). After denying at first that he had talked with defense counsel, he admitted that he had talked with him. (134). He did not reveal the killing to Juan Garcia or to Angel Semaña. (135). When he reported the killing to the barrio lieutenant, he did not mention the surname of Guillermo Atienza. (139). He knows Guillermo Atienza by his face Atienza the latter was ten meters from the witness. (153). alone. (145). When the first shot was fired by Guillermo The first shot was fired in the air. (155).

2. Juan Garcia, 38, married, carpenter, barrio Cultihan, Taal.—Marcelino Maala was married on January 3 of last year (1946). He rendered help at the wedding. (160). He arrived at the place of the wedding on Sunday at two o'clock in the afternoon. He was accompanied by Angel Semaña. There were about 30 persons, among whom were men and women. (161). The accused were present. (162). When he left the place his companions were Angel Semaña and Jose Atienza. (163). They met on the way Antonio Vitas. (The witness hesitated for a length of time before telling names.) In his group, they were only three, himself, Jose Atienza and Angel Semaña. (164). When they met Antonio Vitas in barrio Subic, he had two companions, one of whom was Elpidio. He does not know the name of the other. (165). When they met Antonio Vitas and his companion they met about 30 persons. (166). He cannot mention their names. (167). They met also two persons in barrio Subic. (169). Then in his group there were only 6 persons. There were 30 when they were near the house of the wedding. (170). They were held up by two unknown persons. (171). That was the first and the last time he saw them. Then the two persons ordered the group to go away, and they went away. (172). Those who went away were the witness, Angel Semaña, Jose Atienza, Antonio Vitas and another. Elpidio was left. They went to a distance of 10 meters. When a shot was fired they stopped. They were 40 meters away when Elpidio was shot. (173). Elpidio was killed. They went to the house of barrio lieutenant. Because he was absent,

they went to the assistant barrio lieutenant. (174). Antonio Vitas reported that Elpidio was killed by two persons. Jose Atienza did not say anything. (175). Those who held up Elpidio were not among the accused. (178). His wife is Julia Semaña, sister of Angel Semaña. (191). The two persons who held up Elpidio searched his body. The witness does not know if they were able to get anything. (196). When Antonio Vitas went to the house of the assistant barrio lieutenant, the witness and his companions were somewhat far from the ground of the house. They did not go up the house. (210). Asked to explain why he testified at first that he heard Antonio Vitas say to the assistant barrio lieutenant that two persons killed the deceased, the witness answered: "We were too far when all of us were going jointly." The trial court warned him not to continue lying. (211). He does not remember whether he has already testified at the previous day that one of the assailants of Elpidio was present at the wedding. After repeated questions that he failed to answer, whether said assailant was present at the wedding, the witness finally answered: "I saw him there once." (212). (He testified that he did not see at the wedding any of the assailants.) (211).

3. Juanito Atienza, 40, married, Chief of Police of Lemery.—He did not receive any written report about the killing of Elpidio Promentilla, as stated by Avelino Panganiban, assistant barrio lieutenant. (217).

4. Graciano Alcantara, 50, widower, farmer, barrio Subic, Lemery.—He remembers that an extraordinary incident took place one Monday in December, 1945, but he does not know the date. (219). It is true, as testified by Avelino Panganiban, that he prepared a written report addressed to the Chief of Police of Lemery. He had a report by Avelino Panganiban. (221). He gave it to Juan Martinez to be delivered to the Chief of Police. Martinez reported to him that he delivered it. (222).

5. Gaudencio Bihis, 35, married, large cattle merchant, barrio Balakilong, Talisay.—He is the brother of accused Florencio Bihis and cousin of accused Pascual Bihis. He knows Guillermo Atienza. (239). He did not attend at the wedding of Marcelino Maala in barrio Bilibinoang, Lemery. He heard that Florencio and Pascual Bihis attended the wedding. He heard about the killing of Elpidio Promentilla one week later. (240). He made an investigation and as a result his brother and cousin were not responsible for the killing. (241). He promised Sotero Promentilla to help him to see Guillermo Atienza, the one responsible for the killing. (243). He went to see Guillermo Atienza telling him that his wife was calling him. But he was not able to present him to Sotero Promentilla. (244). It is true that the witness intervened for the

surrender of the accused to the Military Police. He did it at Sotero's initiative. (247). Sotero suggested the surrender to settle the case. Sotero did not ask any money. Sotero said that the case had to be tried in order that it can be dismissed. After the accused were surrendered to the MPC, Sotero asked the witness the payment of ₱1,500, saying that the accused should indemnify what his brother lost. (248). Severino Bihis, father of Pascual, alleged that he has no obligation to pay anything because his son is innocent. (250). The witness offered to Sotero ₱100 to settle the case. Sotero rejected the offer.

6. Severino Bihis, 56, married, farmer, barrio Balakilong, Talisay.—He is the father of Pascual Bihis. (290). His land can yield not less than ₱4,000 a year. (291). Pascual went along with bad persons. (292). When Pascual went to the wedding his companions were Pedro Arriola, Antonio Daño, Florencio Bihis, Martin Maranan. We did not see Guillermo Atienza and Dominador Cagitla accompanying them. (296). Tomas Caraos was present. (297). Pascual returned home at six o'clock in the afternoon of December 3, the day of the wedding. (298). There was nothing unusual in him. (299). Sotero Promentilla offered to settle the case with the payment to him of the amount of ₱1,500. The witness offered ₱100 because his son was innocent and, if he was not, the witness was willing to pay even ₱300 or ₱400. (304).

7. Pedro Arriola, 24, single, farmer, Balakilong, Talisay.—He was at Balakilong. Pascual Bihis requested him to bring him in a banca to attend a wedding at Bilibinoang. (331). The witness was helped in rowing his boat by Antonio Daño and Dominador Cagitla. (332). They used rows and sails. The witness agreed to pay Antonio Daño and Dominador Cagitla ₱10 each. (333). He agreed to carry Pascual Bihis free. They left Balakilong in the morning. The passengers were Pascual Bihis, Tomas Caraos, Martin Maranan, Florencio Bihis and Guillermo Atienza. (334). The four had to pay ₱25 each. They did not pay. They arrived at Binibinoan at midnight. (335). The boat was left at the shore. The witness did not make any acquaintance at the wedding house. He does not know Antonio Vitas or Galicano Abanico. He does not know Elpidio Promentilla. (337). He did not drink wine. After lunch, they carried passengers to San Nicolas. (338). They carried seven passengers. (339). They returned to Binibinoan but they did not reach their destination because the boat needed repair, and they had to remain in San Nicolas. They remained in the boat to watch it. (340). The next morning they were arrested. The MPs and policemen arrived. The witness does not know if Antonio Vitas was with them. He was told of no reason for his arrest. He does not remember if he was

searched, because "upon being seen by the MPs we were maltreated." He does not remember having placed any finger mark on Exhibit D. (343). His hand was pulled and his finger mark was placed on the document without knowing it. (344). He does not know anything about what is stated in Exhibit D. "I have no knowledge of any affidavit made by me." (345). When they brought passengers to San Nicolas, Pascual Bihis and his five companions were left at the wedding house. (346). It is not true, as testified to by Antonio Vitas and Galicano Abanico, that he was one of the eight persons who held up Elpidio Promentela and that he was among those carrying a .45 caliber revolver. He and his companions escaped from the municipal jail, Lemery, because, although innocent, they were maltreated or tortured. (347). The witness is a caretaker of the land of Severino Bihis, father of Pascual. (348). He does not remember when he was arrested. In January, 1946 he was working. In the Christmas of 1945 he was already detained. He was never bailed. (350). He cannot explain his testimony that he was working in January, 1946. He bought his boat long ago from an unknown person. He does not remember the whereabouts of the sale document. He did not ask for the name of the seller. (351). He paid ₱150. He does not remember the month or the year of the sale. He does not remember if he bought it during the Japanese occupation. (352). He did not say anything in his direct testimony that he was to pay Dominador Cagitla and Antonio Daño ₱10 each. (359). "I said that I will pay ₱10 to the two of them." (360). No one in their group in the wedding house drank wine. (363). He did not see the woman who was married. He did not see her face, as there were many persons. When they carried seven persons to San Nicolas, the bride remained in the wedding house. (365). The amount of ₱25 was collected by him in Balakilong. (369). He collected only ₱3 from each of the passengers he brought from Balakilong to Binibinoan or ₱15. (370). He cannot say whether the MPs asked him or not about the men that left the wedding house. (373). He cannot say whether he saw the cadaver, because when he was arrested by the MPs and other agents of authority, he lost consciousness. He cannot say whether he saw the cadaver because there was a crowd. He cannot say whether Elpidio Promentilla is dead or not. (374). He was asked if he had an arm and he said no. He was asked who were their passengers in the banca and he said that they are Martin Maranan, Pascual Bihis, Florencio Bihis, Tomas Caraos and Guillermo Atienza. (375). After their escape, they surrendered voluntarily to the MPC. Sotero Promentilla told him that he was to present them to MPC and that they would be released. (382). He

has been working under Severino Bihis for more than ten years. (385).

8. Pascual Bihis, 24, married, merchant, barrio Balakilong, Talisay.—He attended the wedding party in Binibinoan on December 3, 1945. (387). He went in a group of eight. His companions were Pedro Arriola, Antonio Dano, Florencio Bihis, Tomas Caraos, Dominador Cagitla and Guillermo Atienza. (388). He heard that Elpidio Promentela is a relative. He saw him at the wedding party. (390). He saw him talking with Guillermo Atienza who addressed him: "That you are too traitor." Guillermo said that a horse he bought was bought by Elpidio by offering a high price. Elpidio said that he would buy even the crown of a king if offered to him and he has the money to buy it. (391). Guillermo was enraged and the witness intervened to appease both of them. Tomas Caraos also advised Guillermo to yield as no one of them was actually able to buy the horse. (392). Guillermo said that he was yielding for the sake of Caraos. It is true that the witness, as testified by Antonio Vitas and Galicano Abanico said, "Son of a bitch are you not going to obey me." And he said it because Guillermo Atienza was much enraged. Florencio Bihis also intervened, asking Guillermo Atienza to have patience as no one of them disbursed the money for the horse. (393). Guillermo Atienza left the wedding at two in the afternoon, accompanied by an unknown person. Before him, Pedro Arriola, Antonio Dano and Dominador Cagitla left. (394). The witness left the house in the company of Florencio Bihis, Martin Maranan and Tomas Caraos. They went walking except Caraos who boarded a boat. (396). The witness arrived home at six in the afternoon. It took him three hours. (397). It is not true that the witness with seven companions held up, and robbed Elpidio Promentela. The latter left the wedding party between one and two in the afternoon, but the witness did not see him leaving. (398). The witness admitted having been convicted of homicide. (400) He used to go along with Tomas Caraos many times. During the American occupation he never went along with him. (403). Before December 3, 1945, Guillermo Atienza used to go to the house of the witness. (409). For the trip to Binibinoan the witness paid Pedro Arriola ₱15. Although the current price for such a trip is from ₱25 to 30, the witness offered a certain amount to Pedro Arriola who would have agreed to take him gratuitously, because Arriola is his tenant. (411). Before boarding the boat, there was no agreement as to the specific amount to be paid. (412). The witness and some of his companions drank wine at the wedding party. There was not enough wine for them to get intoxicated. (416).

9. Angel Semaña, 45, married, farmer, barrio Cultihan, Taal.—Marcelino Maala is his nephew. Marcelino mar-

ried Julita Catiña on December 3, 1945. (511). He attended the wedding which took place on Monday December 3, 1945. He went to the wedding since December 2. (512). He went to the wedding accompanied by his brother-in-law, Juan Garcia. (513). Among those they overtook on the way was Jose Atienza. (514. He knows accused Tomas Caraos and Pascual Bihis. They attended the wedding. (515). He saw the accused only on the day of the wedding. (516). He left the place of the wedding at 3 o'clock and his companions were Antonio Vitas, Galicano Abanica, Elpidio Promentilla, Jose Atienza and Juan Garcia. (517). They did not go to the shore but they passed by the shore. (519). The bridegroom took a boat to Cultihan. The bride remained in Bilibinoang. (520). When they arrived at barrio Subic they met two persons. (523). They asked Elpidio to wait. "The six of us stopped. One of the men talked with Elpidio and the other said to us to follow our way. We walked about ten meters and started to wait for our companion." (524). "The person who ordered us to continue, otherwise we would die, immediately fired a shot in the air." At about 30 meters we stopped again because we heard two shots. We saw our companions following. (525). "We went running. We were five. We went to the barrio lieutenant." (526). "The first one who reported the matter was Jose Atienza. Then Antonio Vitas said that their companion was shot by two persons." (527). Antonio said that one of the assailants was Mimo. (528). The witness saw Mimo at the wedding. (529). They did not return to the place of the shooting. (513). The two assailants are not among the six accused. (531). The hold-up took place at 5 o'clock in the afternoon. (532). The witness did not testify before any authority of Taal or Lemery about the killing. (535).

10. Avelino Panganiban, 40, married, barrio Subic, Lemery.—In the last part of 1945 he was the assistant barrio lieutenant. (596). One day, the date of which he does not remember, somebody reported to him that someone was shot. Five persons reported to him. He does not remember their names. (597). After he was subpœnaed, he happened to learn their names as Antonio, Galicano, Jose, Juan, and Angel. (598). Among those present in court was a person he pointed and who answered that his name is Juan. The other said that his name is Angel. (599). Antonio and Jose were ones who talked to him. Antonio said that they were held up and that their companion, Elpidio Promentilla was taken. (601). They said that they did not know the assailants, and that the assailants were two. The witness ordered them to go to town to report the matter and he went to the place of the shooting to see the cadaver. (602). The witness went to the place and he watched the cadaver. (604). They brought with them a

written report made by Graciano Alcantara. The written report was ordered by the witness to be made. (605). The witness arrived at the place of the cadaver at about 7 o'clock at night. He left the place at 4:00 o'clock in the morning. He was accompanied by Councilor Ciriaco Desagun. (607). He heard that eight were accused long after six accused were detained. (612). He did not do anything about it because the accused are not his relatives or residents of his barrio. (613). He knows accused Pascual and Tomas. (614). He was called by the provincial fiscal to testify about the case. He did not see the provincial fiscal. "I don't like to be a witness because I do not want to be molested." (620).

11. Antonio Daño, 23, married, farmer, barrio Balakilong, Talisay.—He was a member of the crew of a banca which left Balakilong for Bilibinuang to attend a wedding. (646). He rendered service only at one time at the request of Pedro Arriola. Dominador Cagitla and he would have to be paid ₱10. (647). The passengers were Pascual Bihis, Tomas Caraos, Florencio Bihis and Martin Maranan. Only four. They were to leave at dawn. He slept at home from Sunday afternoon to Monday morning. (648). At dawn on Sunday he went to the house of Pascual Bihis accompanied by Pedro Arriola. There Tomas Caraos and Dominador Cagitla arrived. The passengers were only four. (649). They were Pascual Bihis, Tomas Caraos, Florencio Bihis and Martin Maranan. At the beach, Guillermo Atienza joined them. "There were five passengers but when we were about to leave the beach of Balakilong Guillermo Atienza arrived." (650). They were eight in all who alighted from the banca to attend the wedding at Bilibinoang, where they ate. Shortly after eating "we left that house." (651). He left with Pedro Arriola and Dominador Cagitla. The five passengers remained in the house of the wedding. Afterwards some passengers came requesting that they be taken to a certain place. They were seven. Four women and three men. (652). They wanted to be taken to San Nicolas at 3 o'clock in the afternoon. After the passengers had disembarked and paid "we left the place. ₱20.00 was given to me by the passengers. (653). We were not able to reach barrio Bilibinuang because our banca sank. Some parts of the banca were destroyed." The banca was completely submerged. "Even the banca was submerged we remained sitting inside the banca." The water reached their waist. (654). The banca was pushed by the wind to the beach." They reached the beach late at night. The banca was not in a condition to be paddled. "We took the banca to the shore," and they slept in the banca. The next day they went to the store. (655). They bought bread and that morning the MPs arrived. "Upon seeing me, I was mal-

treated by them. They arrested me. They searched my body." He cannot tell whether his companions were searched. (656). A hunting knife was taken from his possession. He told the MPs that he had no firearms. He did not know anything about the death of Elpidio Promentilla. (657). It is not true that he is one of the persons who surrounded Elpidio Promentilla in the afternoon of December 3, 1945. At that time "we were already in the barrio of San Nicolas. (661). He does not know Elpidio Promentilla. (662). He does not remember the time when he went to the wedding party at Bilibinuang. (663). He has known Pedro Arriola and Pascual Bihis since childhood. (664). After he escaped from the municipal jail of Lemery, he and Cagitla were paid ₱9, ₱4.50 each, by Pedro Arriola. (668).

12. Tomas Caraos, 27, married, merchant, barrio Cultihan, Taal.—He was one of the passengers of Pedro Arriola's banca one Monday in December, 1945, to attend a wedding in Bilibinuang. (697). He was invited by the father of the bridegroom and by Pascual Bihis. (699). They were eight in all including the crew. They reached Bilibinoang at 1 o'clock. (701). He met among his acquaintances at the wedding party Dominador Gunabac, Aguido Maaya, Pedring, Antonio and Elpidio Promentilla. (702). He knows Antonio Vitas. He was also there. He knows Galicano Abanico. He knows Juan Garcia. He was there. The same with Angel Semaña and Jose Atienza. (703). "Among us there were really drinking wine." There were many people drinking wine. "We drank little amount of wine only." (704). They drank coconut wine after dinner. He drank about one-third of a little glass. (705). It is customary to offer wine in a wedding party. (706). Elpidio Promentilla and Guillermo Atienza "were talking in loud voices. (707). It was about a horse owned by one from Bayuyungan. That was already agreed to be sold to Guillermo Atienza but Elpidio Promentilla bought it for a higher price." (709). Guillermo Atienza got mad. Elpidio told Guillermo Atienza that even if the sale was already agreed upon between him and the owner of the horse, inasmuch as his money was still at home, he was willing to give the horse to Guillermo at the same price. Guillermo was still mad and told Elpidio Promentilla "You are a traitor." Elpidio got mad also and said: "why do you get mad for that horse when I am offering you the same price that I bought from the owner?" (710). Pascual Bihis intervened and tried to appease them. The witness also tried to pacify Guillermo Atienza, but "I noticed that Guillermo Atienza got mad also to me. He told me that I am meddling with them." (711). It is not true that Pascual Bihis said that he was to shoot those who did not obey him. (712). Those who were drinking wine were

Pascual Bihis, Florencio Bihis, Martin Maranan, "and myself." There were many persons drinking including Elpidio Promentilla. (713). After the heated discussion, Guillermo and Elpidio stopped. They were appeased. (714). "They separated in good terms." (715). As to the testimony of Antonio Vitas that the witness was among the eight persons who help up, killed and robbed Elpidio Promentilla in the afternoon of December 3, "I don't have any knowledge about that." He was not among those who killed Elpidio Promentilla. He left the wedding party at 3 o'clock in the afternoon. (717). "I went to the beach together with the bride." He boarded "the same banca where the bride boarded. They went to see his place at barrio Cultihan. (718). In the banca there were more than twenty persons. Only the bride rode in the banca. The bridegroom remained. (719). After boarding the banca he saw his companions Pascual Bihis, Florencio Bihis and Martin Maranan. "They wanted to go with me to the beach." (722). After embarking on the bank he did not meet again that same afternoon or during the night his four companions. (723). Antonio Vitas testified against the witness because the latter and Major Pedro Gahol fired once again the Japanese. (724). The witness did not know if they hit the Japanese. On the following day the Japanese forces raided the barrio of Mojon and the daughter of Antonio Vitas was taken by the Japanese, and since then Antonio threatened the witness that someday "you will pay for this." (725). The Japanese was shot because he used to commandeer everything. "During the Japanese time we often killed the Japanese in our place." (726).

13. Florencio Bihis, 27, single, farmer, barrio Balakilong, Talisay.—He was among those who attended the wedding party in Bilibinuang on December 3, 1945. He was invited by Pascual Bihis. (804). He is his first cousin. He saw Elpidio Promentilla at the wedding party when dancing was going on. He saw him when the dance was over. (810). He was talking with Guillermo Atienza. They were quarelling. "When I arrived the two were already appeased. (811). Guillermo Atienza was the one who first left the house. He left alone. (812). One hour had elapsed before Elpidio left the house. (814). The witness left the wedding party at 3:30 in the afternoon. His companions were Pascual Bihis, Martin Maranan and Tomas Caraos. (815). Tomas Caraos boarded the banca in which the bride went to San Nicolas. The witness went alone with Martin Maranan and Pascual Bihis. (816). They returned to Balakilong by walking. (817). It is not true that he was one of the eight persons who killed and robbed Elpidio Promentilla. He learned that he was included in the complaint for the death of Elpidio Promentilla two days after the wedding. (818). The witness is lame

because he was among those who were held up in barrio Kiling, Talisay, while they went to Rosario to get Guillermo Atienza. He went with Gaudencio Bihis, Pascual Bihis and Martin Maranan. (820).

14. Martin Maranan, 26, married, farmer, barrio Santa Cruz, Rosario.—He attended the wedding party in Bilibinuang on December 3, 1945, having been invited by Pascual Bihis. They were seven in all who started from the house of Pascual: Antonio Daño, Pedro Arriola, Florencio Bihis, Pascual Bihis, Tomas Caraos, Dominador Cagitla and the witness. The banca was managed by Pedro Arriola, Antonio Daño and Dominador Cagitla. At the beach Guillermo Atienza joined them. (896). "We left the wedding party at about 3 o'clock with Florencio Bihis and Pascual Bihis. (897). Tomas Caraos went with the bride to Cultihan. (898). We went hiking with Pascual and Florencio Bihis to Balakilong which they reached at about 6 o'clock. It is not true that he was one of those who killed Elpidio Promentilla. (899).

15. Ciriaco Laurel, 58, married, mayor of Talisay.—He is mayor since June 24, 1946. Gaudencio Bihis went to see him telling him that his brothers Florencio Bihis and Pascual Bihis and Martin Maranan were accused of robbery with homicide and went to see Velociano Laurel, the son of the witness. (917). Gaudencio Bihis told the chief of police that his brother and his cousin are not the ones who committed the robbery and wanted to take Maximo, Geronimo or Guillermo Atienza from Talisay to be arrested and the chief of police answered "You bring him here." But Maximo was not brought because he was killed in Kiling, Talisay. (972).

16. Luis Atienza Bihis, 57, married, attorney-at-law, 389 Dapitan, Manila.—"Before appearing as counsel for the defense in this case, Gaudencio Bihis who is my relative went to me requesting me to help him in preparing the necessary documents for settling amicably the case between his brother Florencio Bihis, accused, Pascual Bihis and others also accused in this present case on the one hand, and on the other part, the relative of the deceased Elpidio Promentilla. I told Gaudencio Bihis that no settlement could be made judicially in any criminal case because the government is the aggrieved party and the accused are the one opposed to the government interest. Gaudencio Bihis requested me to accompany him to Taal. When he saw in Taal Sotero Promentilla, he asked him if he wanted the case to be amicably settled and Sotero replied in the affirmative. Sotero said that his father wanted some sort of consolation. Severino Bihis protested against being compelled to pay a single centavo. Gaudencio said that if it is a matter of ₱1,000 his uncle can make some effort. Severino said that if his son is guilty, he would be willing to give not only ₱1,500 but even ₱10,000 by selling or

mortgaging his property. He was willing to give a contribution of ₱100. Nothing clear was done. The next day, the witness said that it was possible for him to convince his uncle to give ₱1,000, but Sotero said that as these people are now in jail his father was asking ₱2,000. (989–995).

After a careful and thorough analysis of the testimonies of all the witnesses both for the prosecution and for the defense, the conclusion is inevitable that it has been proved beyond all reasonable doubt that on December 1, 1945, Elpidio Promentela or Promentilla left his home with ₱4,000, as capital to buy horses, and another amount for expenses. He carried with him a watch and a ring valued respectively at ₱60 and ₱150. On December 3, 1945, he attended a wedding party in barrio Binibiloan, Lemery. All the accused also attended it, where they had been drinking. All of them were armed with .45 caliber revolvers. At the time, accused Pascual Bihis told his companions that he would shoot them if they did not obey him. In the afternoon the party broke out. The people went to the shore to take boats to their respective destinations. Because they were not able to get a *banca,* Elpidio and his companions, Antonio Vitas and Galicano Abanico, started home by walking, but not without taking off first their pants to avoid being wet, as they had to pass through water. In undressing to remain in drawers and undershirt, Elpidio took his big roll of money and rolled it in the folds of his pants. He did it in the presence of the crowd gathered in the place, among them the accused. When the deceased and his companions arrived at a place at barrio Subic, eight persons, including Guillermo Atienza and the six appellants, overtook them and killed Elpidio. When the latter's companions returned to the scene with the assistant barrio lieutenant, they denounced the killing and no money was found. The watch and ring of Elpidio also disappeared. The appellants had been seen by Elpidio's companions searching the body of Elpidio immediately after killing him by shooting.

Appellants do not dispute the robbery and the killing of Elpidio. They even proved by their witnesses that, as a matter of fact, Elpidio was killed in barrio Subic on December 3, 1945. They also agreed that Guillermo Atienza was one of the killers. They contend, however, that they took no part in the killing, because at the time three of them were sitting in a damaged and half-wrecked *banca,* covered with water up to their waist, while the remaining others went walking in another way to their homes, and that the killing was effected by only two persons, Guillermo Atienza and an unknown and unidentified person.

The evidence offered by the defense appears to be unconvincing and has not detracted any force from the unbiased, positive, and forthright testimonies of Vitas and Abanico, who had actually witnessed the perpetration of the crime.

The fact that the witnesses for the defense joined Guillermo Atienza with an unknown person as one of the killers of the deceased has not much weight considering that Guillermo Atienza is already dead, and to point him as one of the killers may give some color of veracity to said witnesses' declarations that they had also seen the killing.

Aside from the many contradictions among the witnesses for the defense, the theory of the prosecution appears to be corroborated by the admissions made by Pedro Arriola the next day after that of the crime when he was investigated, and by some incidents at the wedding party. While some witnesses for the defense said that the accused did not drink wine at the wedding party, others said that they did. While some denied that Pascual Bihis uttered any menacing words against those who would not obey him, others said that he did.

Appellants tried to convey the idea that Guillermo Atienza killed Elpidio as a reprisal because of a conflict between them in the buying of a horse. But according to the same appellants, the difference was amicably patched up, as Elpidio allowed Guillermo Atienza to have the horse and the settlement took place hours before the killing.

Appellants are guilty of robbery with homicide.

The trial court sentenced them to *reclusión perpetua* and to indemnify the heirs of the offended party in the sum of ₱2,000 without subsidiary imprisonment in case of insolvency, to return to said heirs ₱4,000, the ring worth ₱160 and the watch valued at ₱60, or in its default to pay them the amount of ₱4,220, also without subsidiary imprisonment in case of insolvency, and to pay the costs of the proceedings.

The Solicitor General recommends that the amount of ₱4,220 be reduced to ₱4,210 and that the indemnity of ₱4,000 be increased to ₱6,000 in consonance with the doctrine laid down in People *vs.* Amansec (L–927, March 11, 1948, 45 Off. Gaz. [Supp. to No. 9], 51).

The recommendations are well taken. The appealed decision is affirmed, modified as recommended, with costs against appellants.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L–1701. December 22, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PABLO ESQUIVEL and AMADO DIZON (*alias* AMADO BASCO), defendants and appellants.

1. CRIMINAL LAW; MURDER; PRESENCE AT THE PLACE OF COMMISSION OF CRIME.—E's presence in J's house when S. N. arrived from Manila the first time is the only point on which the two wit-

nesses agree. But that presence alone does not constitute proof that E was a party to the criminal conspiracy.

2. ID.; ID.; EVIDENCE; CONVICTION COULD NOT REST ON SLENDER AND SHAKY FOUNDATION.—Whatever the case, a thorough analysis of the record discloses that E's conviction rests on a slender and shaky foundation. The case for the prosecution was not presented with the care and thoroughness which the gravity of the offense demanded. The evidence was presented in a shipshod manner. No efforts seems to have been exerted to amplify and coment with positive and unequivocal assurances and details what appeared to be casual and loose reference to the accused's supposed intervention in the crime.

3. ID.; ID.; PROSECUTION'S PRIME DUTY TO COURT, ACCUSED AND STATE.—In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state.

4. ID.; ID.; EVIDENCE; CONVINCING PROOF OF COAUTHORSHIP IN A CRIME.—A. B.'s participation in the crime as revealed by R's and N's testimony is such as to be beyond any possibility of misapprehension. The witnesses' credibility is put in issue as a question of black and white. The trial court stated as its firm conviction that this appellant was a co-author of the heinous crime. Our review of the evidence leads us beyond doubt to the same conclusion. Over contradictions on some details, the two principal witnesses are agreed and categorical in the affirmation that B shared in the planning of carrying out the robbery; that he was one of the co-conspirators who came to Manila and enticed the victims into Nueva Ecija, riding in one of the jeeps; and that it was he who ordered that the drivers' hands be tied, and he was one of the gang who killed them. The fact that the witnesses refrained from implicating E in the same manner that they did B, with no discoverable interest in shielding the former and putting more blame on the latter than was his, underscores their even temper and restraint from exageration.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Nable, J.

The facts are stated in the opinion of the court.

Alfonso G. Espinosa for appellant P. Esquivel.

Herminio E. Algas for appellant A. Dizon.

Assistant Solicitor General Inocencio Rosal and *Solicitor Jose P. Alejandro* for appellee.

TUASON, *J.:*

On July 28, 1946, two jeeps respectively driven by Rosalio Paje and Benigno Valenzuela and owned by Mauro Buñing were "hired" by a group of hoodlums on Azcarraga Street, Manila, purportedly to bring rice from San Miguel, Bulacan. When they reached San Miguel, the

drivers, over their objection, were directed to proceed to San Isidro, Nueva Ecija. In the latter town, their hands were bound and in the latter part of the day they were marched up to a thicket and murdered, after which their bodies were thrown into the river. The next day the jeeps were sold in Cabanatuan, without the route signs and the spare tires which were left in San Isidro, and were recovered by members of the MPC detachment in that town.

Only five of the malefactors were arrested, three of of whom—Amado Basco *alias* Amado Dizon, Ben Pascual *alias* Bernabe Pascual, and Pablo Esquivel—were brought to trial, and two—Gorgonio Rivera and Simplicio Navarro —turned state's evidence. These last two were not included in the complaint or information and at the time of trial were still in the hands of the Philippine Constabulary. The rest of the culprits, although named in the complaint filed with the justice of the peace, had not been arrested on the dates the case was tried in the Court of First Instance.

The three accused who were put on trial were found guilty of robbery with double homicide and were sentenced jointly and severally to pay the owners of the jeeps ₱4,000, the heirs of Rosalio Paje ₱2,000 and the heirs of Benigno Valenzuela equal sum. They were also sentenced to pay the costs and to the accessories of the law. From this judgment, Dizon and Esquivel have appealed, Ben Pascual having abided by the judgment. All of them set up alibi as a defense.

Following is a brief summary of the testimony of Simplicio Navarro, 17 years old, residing at 1324 Juan Luna, Tondo, Manila: On or about the 24th of July, about one o'clock in the afternoon, he and Mariano Jacutan (from Nueva Ecija), whom he had known before, met on Juan Luna street, and Jacutan asked him if he wanted to come along to Nueva Ecija. Having answered yes, he went to San Isidro, Nueva Ecija on the 27th. In San Isidro he saw Jacutan and was introduced by the latter to Amado Basco, one named Naong Malingit, another small fellow whose name he did not remember, Pablo Esquivel, Ben Pascual, one Turong, one Rading and the latter's father. On the same day (but apparently at another meeting) the plan was made to commit the robbery. Those who were present in that meeting were Mariano Jacutan, Amado Basco, Gorgonio Rivera, Turong, Rading and the witness. It was agreed that the witness, Gorgonio Rivera and Amado Basco would come to Manila to "hire" a jeep to fetch rice from San Miguel. The three of them came to Manila and met, on Juan Luna Street, Lolet and Carding whom they invited to join them. On Sunday morning, July 28, they went to Azcarraga Street with Lolet

and Carding and succeeded in "hiring" two jeeps as planned. In going to Nueva Ecija, the witness and Basco rode in one jeep and the rest in the other. In San Miguel, in a gas station, they found Fred who got into the jeep wherein Lolet and Rivera were riding and came along to San Isidro. In San Isidro, in front of Mariano Jacutan's house, their jeeps stopped and the passengers went upstairs to eat, as they had not taken their breakfast yet. The chauffeurs were told to follow them but they said they were going to eat in the jeeps. Nevertheless the drivers were persuaded at last to come, but they stopped at the porch. When the chauffeurs insisted on remaining on the porch, the witness heard someone say that whoever refused would be shot. Upon this, the drivers stepped inside and sat on two chairs. Thereafter Amado Basco, who was carrying a .45 automatic, told Gorgonio Rivera to tie them and Rivera obeyed. Later, Jacutan told Turong that it would be better to take the chauffeurs away from the house and Turong said it was a good idea. Then Turong selected the men who were to remove the drivers, and those men were Fred, Nanong Munti, and one of Captain Baguisa's men whom he did not know. Gorgonio Rivera followed the executioneers just named and the drivers at about two o'clock in the afternoon.

Gorgonio Rivera, 22 years old, resident of Carmen, Zaragosa, Nueva Ecija, testified in substance that on July 27, 1946, he came to Manila with Amado Basco and Simplicio Navarro. In Manila, they met Carding and Lolet, and Amado Basco talked with them and said they were to hire a jeep. They were able to contract two jeeps and came back to San Isidro therein. In one jeep he, Carding and Lolet rode, and Amado Basco and Simplicio Navarro rode in the other. It was Sunday and they arrived in San Isidro at eleven o'clock in the morning, having left Manila at about eight o'clock. In San Isidro they stopped in front of Mariano Jacutan's house and Amado Basco told the drivers to get off and come up the house. Afterward, Lolet, Lopez and Turong drove the jeeps and kept them in a bamboo thicket. Amado Basco told him (witness) to look for a piece of rope and tie the drivers. He complied with this order and while tying the drivers Basco was aiming his .45 at them. The two drivers were later taken to the bank of the river where there were bamboo trees. Those who conducted the drivers were Amado Basco, Fred, Mariano Jacutan and Carding. Before that, coming from a hukbalahap parade, he found Pablo Esquivel saying, "If we leave those two chauffeurs alive they will denounce us," and Amado Basco commented that was true and they should be killed. The two drivers were led to the bank of the river.

Basco and Esquivel as well as Ben Pascual each signed and swore to a confession written at the MPC headquarters. Both repudiated these statements alleging they had been forced to sign them through violence. The charge of maltreatment was not denied although there was a chance for the prosecution to do so. Moreover, there is a stamp of truth in the charge of torture.

It will be seen that the evidence against Esquivel, apart from his alleged confession, consists of Simplicio Navarro's testimony that he came to know this defendant in Jacutan's house, and Gorgonio Rivera's testimony that Esquivel suggested the liquidation of the two drivers. The prosecution does not claim that Esquivel made the trip to Manila or that he accompanied the men who murdered the drivers. And Rivera's and Navarro's testimony does not pretend to show that Esquivel took part in the devising of the scheme to entice jeeps to Nueva Ecija. From what we can gather from the confused evidence, it does not even say that Esquivel was around at any moment from the time the jeeps arrived to the time the drivers were removed to a secluded spot. That Esquivel suggested the elimination of the drivers, as Gorgonio Rivera asserted, was contradicted by the other witness, Simplicio Navarro, who said that it was Jacutan from whom the idea came and that it was Turong, not Basco, who seconded it.

Esquivel's presence in Jacutan's house when Simplicio Navarro arrived from Manila the first time is the only point on which the two witnesses agree. But that presence alone does not constitute proof that Esquivel was a party to the criminal conspiracy.

We do not say that Gorgonio Rivera committed an intentional falsehood. His testimony on the whole impresses us as true. The imputation by Rivera to Esquivel of the above-quoted utterance may have been an honest mistake. We can discern the possibility that Rivera mistook Jacutan or another for Esquivel when the speaker made a proposal to do away with the drivers.

Whatever the case, a thorough analysis of the record discloses that Esquivel's conviction rests on a slender and shaky foundation. The case for the prosecution was not presented with the care and thoroughness which the gravity of the offense demanded. The evidence was presented in a slipshod manner. No efforts seems to have been exerted to amplify and cement with positive and unequivocal assurances and details what appeared to be casual and loose references to the accused's supposed intervention in the crime.

In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the court the pertinent facts

at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state.

Amado Basco's participation in the crime as revealed by Rivera's and Navarro's testimony is such as to be beyond any possibility of misapprehension. The witnesses' credibility is put in issue as a question of black and white. The trial court stated as its firm conviction that this appellant was a co-author of the heinous crime. Our review of the evidence leads us beyond doubt to the same conclusion. Over contradictions on some details, the two principal witnesses are agreed and categorical in the affirmation that Basco shared in the planning of carrying out the robbery; that he was one of the co-conspirators who came to Manila and lured the victims into Nueva Ecija, riding in one of the jeeps; and that it was he who ordered that the drivers' hands be tied, and he was one of the gang who killed them. The fact that the witnesses refrained from implicating Esquivel in the same manner that they did Basco, with no discoverable interest in shielding the former and putting more blame on the latter than was his, underscores their even temper and restraint from exaggeration.

The Solicitor General recommends the maximun penalty. The writer of this opinion agrees with this recommendation, but majority of the Court voted for unqualified affirmance of the sentence imposed on Basco by the trial court. Hence, the judgment as to Basco will be and it is affirmed, with one-half of the costs of appeal, except that the indemnity for each set of heirs shall be ₱6,000 instead of ₱2,000. The judgment against Esquivel is reversed with one-half of the costs charged *de oficio*.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and *Montemayor,* JJ., concur

Judgment, affirmed on Basco, and reversed on Esquivel.

[No. L–1775. December 22, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MIMBAL KALI, defendant and appellant

CRIMINAL LAW; MURDER; EVIDENCE; SERIOUS CONTRADICTIONS OF TESTIMONIES OF PROSECUTING WITNESSES; PROOF BEYOND REASONABLE DOUBT.—The testimonies of these witnesses contain serious contradictions and manifestly false assertions which constitute a grave challenge to their veracity. By the vehement testimony of the court interpreter, who was obviously disinterested and unbiased, C and K several times changed their

statements on previous questionings; and by C's admission, he implicated K only when he and his then co-prisoners were manhandled. And under such circumstances, the guilt of the accused had not been proven beyond reasonable doubt.

APPEAL from a judgment of the Court of First Instance of Cotabato. Sarenas, J.

The facts are stated in the opinion of the court.

Bartolome I. Viola and *Silvestre A. Orejana* for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Ramon L. Avanceña* for appellee.

TUASON, *J.:*

During the absence of her husband in his home province, Nicanora Carpio Sevillano, a settler in the Koronodal Valley, Cotabato, and her children were brutally attacked with spears and sharpened bamboos and robbed in their frail house early on the night of July 8, 1946.

Roberto Sevillano, 15, and Kahirup Sevillano, 13, two of Nicanora's children, said that at about 7 o'clock p.m., when they or some of them were eating supper, the nipa siding of their house was pushed and the points of spears were driven in through it. Their elder brother was hit in the side just below the armpit and another brother, 5 years old, in the abdomen, from the effects of which both died then and there. The witnesses, their mother, a sister and one Salvador Malones were wounded too but not fatally and succeeded in saving themselves by slipping out of the dwelling. The assailants after the assault carried away cash, clothes, dishes, glassware and other articles they did not remember.

Six non-Christians called Bilaans were afterward arrested. After insistently denying participation in the murders and robbery, in what seems to have been a protracted questioning during which they were maltreated, they confessed, and two of them, Cabo and Kalaan, implicated Mimbal Kali, the present appellant. Prosecuted, the six Bilaans pleaded guilty and sentenced to life imprisonment.

The main evidence against Kali consists of the testimonies of Cabo, Kalaan and Roberto Sevillano. Cabo and Kalaan testified that about three days before the commission of the crime, they and their former co-accused met Kali in the market; that Kali told them to kill Nicanora Carpio Sevillano because he was angry with her on account of his detention on her complaint in Buayan where he was made to eat pork; that Kali promised to give them ₱10 and ten sacks of palay and also to bail them out in case they were caught; that at night, on July 8, they gathered at a point twenty meters from Nicanora Sevillano's house and hid in a bush; that Mimbal Kali was carrying

a panabas (bolo) and the rest spears. He also testified that Kali was a Moro datu and they used to work for him.

Roberto Sevillano testified that after he jumped out from the house he was pursued by Kali with a bolo.

The testimonies of these witnesses contain serious contradictions and manifestly false assertions which constitute a grave challenge to their veracity. By the vehement testimony of the court interpreter, who was obviously disinterested and unbiased, Cabo and Kalaan several times changed their statements on previous questionings; and by Cabo's admission, he implicated Kali only when he and his then co-prisoners were manhandled.

To begin with, Roberto admitted in the investigation of the crime shortly after its commission, that he did not recognize the man who ran after him. At best, this witness was speaking under the influence of auto-suggestion when he named the appellant as the man who looked for him while he was behind a bush hiding.

As to Cabo, the following excerpts, taken at random from his testimony, will serve to emphasize his unreliability and the fact that his implicating the present accused was not spontaneous. He said:

"After having complied with the order, Mimbal Kali *ransacked the house* and got everything in the house. I was given only ragged pants and Mimbal Kali got all the new ones.

"Clothings were taken by Mimbal Kali and the glasswares. The pants were taken by Unak, and I, the ragged ones.

On cross-examination, he said:

"The floor of the house of Nicanora Sevillano is very low, he (Kali) pulled the box and *he did not go up any more.*

"While we were attacking, Mimbal Kali was dragging the box."

Regarding his previous criminal record, he said:

"Q. Is that the only sentence you have received up to the present time?—A. Yes, sir, only that case.

"Q. You understand Tagalog, is it not?—A. Yes, sir.

"Q. Where did you learn Tagalog?—A. I do not like to tell a lie. I was in jail before.

"Q. You were in jail for what?—I killed a person who took away my wife."

On his previous statements, he testified:

"Q. What did you tell Lieutenant Robleza?—A. When Lt. Robleza was investigating us, we were telling a lie.

"Q. What lie did you tell before Lt. Robleza?—A. Kungan did not plead guilty in the presence of Lieutenant Robleza.

"Q. Did you tell any other lie?—A. I confessed the truth to Lt. Robleza; it was only Kungan who told a lie.

"Q. You have always been stating that it was only Nicanora that you would kill, why did you kill the other members of the family?—A. The instruction was to kill Nicanora Sevillano and *not* her children.

"Q. Do you mean to say that you are now changing your statement that you made a few minutes ago?—A. That was really the instruction—to kill Nicanora Sevillano and her children."

Regarding his and his companion's arrest and maltreatment, he said that they were arrested by policemen in Palomoloc; that they were investigated "and at the same time they boxed us."

"Q. When you said that Mimbal Kali was also with you, what did the MP do?—A. To those who apprehended us we revealed the names of the perpetrators of the crime after they had given us blows, but when we were brought to Cotabato, we changed our testimony and did not admit and tell the persons who perpetrated the crime because Mimbal Kali warned us not to do so."

Jose Maladia, court interpreter, testified that he acted as interpreter for Macapagal of the Provincial Fiscal's office; that when they arrived from Glan, Cabo and Kalaan called for him and said, "Please come with us to the office of the Fiscal. While before the court in Glan, we told it was Mimbal Kali who ordered us to kill the Visayans only because we were tied in Glan for three days continuously and we were not fed." Maladia said that Macapagal asked Cabo what he wanted, and Cabo looked up and down and hesitated to answer; that Macapagal then called Kalaan and asked him about the story given by Cabo; that Kalaan answered that Cabo was telling many stories. Witness further said that in Glan, Cabo implicated Kali but when they reached Cotabato from Glan, he again told different stories. Maladia stated that Cabo implicated even the warden in Cotabato and "said so many things about Lieutenant Robleza and the warden."

The guilt of the appellant not having been proven beyond reasonable doubt, the appealed decision is reversed and the appellant acquitted with costs *de oficio*.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and *Montemayor, JJ.,* concur.

Judgment reversed, appellant acquitted.

[No. L–1961. December 22, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANTONIO DE LOS REYES, defendant and appellant

CRIMINAL LAW; TREASON; EVIDENCE; ALIBI AS A DEFENSE.—Appellant attempted to put alibi as defense, alleging that, at the time the facts narrated by the witnesses for the prosecution happened, he was in the constabulary barracks in Barili, serving as mess sergeant and engaged in buying foodstuffs in the Barili market. To support his contention he offered the testimony of F. V., a detainee in the provincial jail for treason, and the declarations of J. A. and an indictee. A testified that he was in command of the barracks; that during all the time that he was in Barili, appellant never separated from the company, never got out from the garrison, never separated from him, and all the time has been under his observation. To make the alibi as air-tight as possible, A would almost convey the idea that appellant was as much his companion as the Samar twins were. This yarn is an index of the nature of the testi-

monies presented by appellant in support of his alibi, making it completely unbelievable. It is unnecessary to consider the testimony of A. V., another witness of appellant, who testified that in February, 1945, he brought appellant from Cebu City to the mountains, where they remained until the end of March, 1945. V is confined in prison for illegal possession of firearm and his testimony, even if accepted, would not belie appellant's participation in the investigation and torture of T. P. and T. S. and in the killing of F. M.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Vicente Sotto for appellant.

Assistant Solicitor General Ruperto Kapunan, Jr. and *Solicitor Ramon L. Avanceña* for appellee.

PERFECTO, *J.:*

A soldier of the Philippine Constabulary, which was merged with the USAFFE at the outbreak of the Pacific War, appellant surrendered with his unit to the Japanese army about two months after said unit withdrew from Cebu City. He became sergeant of the Bureau of Constabulary under the Japanese regime.

On September 3, 1944, he took part, together with other undercovers in the service of the Japanese Army, in the maltreatment of Teofilo Ponce and Tereso Saso, and in their investigation as to their connection with and knowledge of the whereabouts of the guerrillas. Their maltreatment and torture took place at Cabadiangan, municipality of Liloan, Cebu, where Teofilo Ponce had been previously apprehended by appellant and his companions in the early morning. Appellant and companions were looking for Governor Hilario Abellana, whom they did not catch at the time. Sometime thereafter, Governor Abellana was arrested and liquidated by the Japanese.

From Cabadiangan, Teofilo Ponce and Tereso Saso were brought by appellant and his group to the market place of Tamiao and there they saw also arrested by appellant's group Francisco, Evaristo, Epifanio and Victorio Magdadaro. Francisco Magdadaro was, on the same day, finally killed on the spot by appellant and his companions.

The above facts have been conclusively proved by the testimonies of Teofilo Ponce and Tereso Saso and partly corroborated by appellant himself and his witnesses with respect to appellant's membership in the Bureau of Constabulary during the Japanese regime. Appellant has never questioned the motives of the witnesses for the prosecution and there is no reason why their veracity should be doubted.

Appellant attempted to put alibi as defense, alleging that, at the time the facts narrated by the witnesses for the prosecution happened, he was in the constabulary barracks

in Barili, serving as mess sergeant and engaged in buying foodstuffs in the Barili market. To support his contention he offered the testimony of Florentino Villarta, a detainee in the provincial jail for treason, and the declarations of Jose Alviar and an indictee. Alviar testified that he was in command of the barracks; that during all the time that he was in Barili, appellant never separated from the company, never got out from the garrison, never separated from him, and all the time has been under his observation. To make the alibi as air-tight as possible, Alviar would almost convey the idea that appellant was as much his companion as the Samar twins were. This yarn is an index of the nature of the testimonies presented by appellant in support of his alibi, making it completely unbelievable. It is unnecessary to consider the testimony of Ambrosio Velasquez, another witness of appellant, who testified that in February, 1945, he brought appellant from Cebu City to the mountains, where they remained until the end of March, 1945. Velasquez is confined in prison for illegal possession of firearm and his testimony, even if accepted, would not belie appellant's participation in the investigation and torture of Teofilo Ponce and Tereso Saso and in the killing of Francisco Magdadaro.

The facts proved by the evidence on record show conclusively that appellant adhered to the enemy, by giving him aid and comfort and, therefore, has committed the crime of treason which is punishable under article 114 of the Revised Penal Code. The trial court sentenced him to suffer the penalty of *reclusión perpetua* and to pay a fine of ₱10,000 and the costs. The sentence, being supported by the facts and the law, is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment affirmed.

[No. L-1963. December 22, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MAGNO QUINTO ET AL., defendants. JOSE ZITA (*alias* GORDO), appellant.

1. CRIMINAL LAW; MURDER; EVIDENCE; ACCUSED'S FAILURE TO REVEAL THE FACT WHICH WAS HIS ONLY SALVATION FROM PROSECUTION AND STIFF SENTENCE, EFFECT OF.—Nowhere in this statement did the accused say or give to understand that he was with C's kidnappers and killers as a captive or prisoner. A former sergeant in the Philippine Army and intelligent, and not being under force or pressure to make a confession, he could not possibly have forgotten to mention, let alone emphasize, a point which, if true, was his only possible salvation from prosecution and a stiff sentence. Moreover, in this statement he revealed

knowledge of the pseudonyms or nom de-guerre of some of the leaders of the band, knowledge which betrayed intimate association between him and those people if not his affiliation to the hukbalahap organization.

2. ID.; ID.; ID.; INCREDIBLE DEFENSE.—It has also been shown that in Floridablanca defendant's family lived with a municipal policeman and that he did not tell that policeman or any other local official the murder he had witnessed. His silence could not have been due to fear of reprisals because he belonged to an armed force the prime function of which was to arrest and prosecute felons and outlaws. The trial court committed no error in not giving credence to defendant's evidence that he reported the crime to his commanding officer in Tarlac. Had he done that it is certain that arrests would have been made and prosecution started sooner than late in 1946.

APPEAL from a judgment of the Court of First Instance of Pampanga. Mojica, J.

The facts are stated in the opinion of the court.

Ramon F. Aviado, for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Luis R. Feria* for appellee.

TUASON, *J.:*

Gregorio Caling was picked up at his home in Floridablanca, Pampanga, and killed by a band of hukbalahaps on the night of December 9, 1945. Jose Zita, the appellant, was with the band, and of about ten men suspected, he was the only one prosecuted. Ruperto Miguel, an avowed member of the band, turned state's evidence and the rest were at large on the date of the trial.

Appellant's part in the crime is denied. Zita explained that he himself was a prisoner of the hukbalahaps under investigation for arms. He was a sergeant in the MPC stationed in Tarlac, and explained that he was visiting his family on furlough from December 7, when he was held for questioning about his service pistol which the hukbalahaps wanted.

On Zita's part in the crime Cornelio Macaspac testified that on the night in question the defendant, Julio Manalansan *alias* Ledesma, (who, according to Caling's wife, was the only one she recognized), and a third man led him toward the bank of the river; that Jose Zita and Ledesma asked him if Gregorio Caling and Nicolas Morales were in their houses; that thereafter Magno Quinto ordered him to follow and indicate Caling's and Morales' houses, Jose Zita and Ledesma remaining on the bank of the river; that after showing Caling's house to Magno he went home; that it was between eight and nine o'clock in the evening.

Ruperto Miguel testified that after Caling was seized he (Caling) was taken to the bank of the Gumain river in the vicinity of which Caling was killed; that Julio Manalansan, Amado Quinto and Jose Zita were present at the

killing while he (witness) and about six others stood watch at the trail about ten meters away; that before he was killed, Caling was questioned by Amado Quinto while Julio Manalansan, Jose Quinto and Jose Zita alternated in beating him with a piece of madre cacao; that Zita was a huk and was armed with a carbine.

The general tenor of the defandant's statement, which he made before the municipal secretary and swore to before the municipal mayor after his arrest, bolsters Macaspac's and Miguel's testimony. What is more, it tends to corroborate the insinuation that one of the possible motives of Caling's killing was that he was suspected of being the author of the burning of Zita's house.

Following are excerpts from the defendant's sworn statement:

"That on the 8th day of December, 1945, between 10 and 11 o'clock in the morning, Yamane (Amado Quinto) came to my house and asked if I know something about Gregorio Caling; he also asked me if it was true that he has a gun. I told him that in spite of the fact that Gregorio Caling was my neighbor before, I do not know anything about it. Then he told me that it was necessary that Gregorio Caling be taken and that the following night I should be ready to go with him in getting Gregorio Caling. He also told me to invite Ledesma. The next day about three thirty in the afternoon, Ledesma (Julio Manalansan, Jr.) and I saw each other. I told him of the words left by Yamane. Then at about six thirty in the same afternoon, Ledesma came and we left going to San Pedro. Reaching Cabangcalan, we found Gomez (Magno Quinto) and Leonardo Laxamana with Salvador Icban, the latter two bringing guitars. * * * Gomez and Ledesma went to the house of Aurelio Macaspac and upon their return I learned that they were asking for the house of Nicolas Morales and Gregorio Caling. Later, we left, I passing the back of the houses near the river going to the bank of the river near Sta. Monica. * * * After one hour waiting, Gomez and his companions arrived with Gregorio Caling with them. Gregorio Caling was tied with his hands behind. We went to the other side of the river * * * After passing the house of the Lingad's, we went to a field. In the middle of the field we stopped and there Yamane removed the clothes of Gregorio Caling and he and Ledesma investigated him in connection with his (Gregorio Caling) arms and also beat him. Not long afterwards, we continued our walk crossing the river once more. * * *. Shortly thereafter, Yamane told us to stop and he ordered the person bringing the spade to dig a grave. While this person was digging, Yamane and Ledesma were questioning Gregorio Caling over his arm and of the persons that they robbed, he and Nicolas Morales, and if he (Gregorio Ca-

ling) did not have any knowledge as to the burning of my house; that he alone was reported to be against the Hukbalahap. After the questioning, (I did not hear the answers of Caling because I was quite far, but I know he said he had no gun and has nothing to do with the burning of my house and he was not against the Hukbalahaps) he was led to the grave by Yamane and Ledesma and Yamane pushed him into the grave. He also step on Gregorio Caling while the latter was already in the pit and he then ordered for the covering of Caling with earth. When the grave was already filled, Yamane asked us to go. Ledesma and the three persons went home."

Nowhere in this statement did the accused say or give to understand that he was with Caling's kidnappers and killers as a captive or prisoner. A former sergeant in the Philippine army and intelligent, and not being under force or pressure to make a confession, he could not possibly have forgotten to mention, let alone emphasize, a point which, if true, was his only possible salvation from prosecution and a stiff sentence. Moreover, in this statement he revealed knowledge of the pseudonyms or nom de-guerre of some of the leaders of the band, knowledge which betrayed intimate association between him and those people if not his affiliation to the hukbalahap organization.

It has also been shown that in Floridablanca defendant's family lived with a municipal policeman and that he did not tell that policeman or any other local official the murder he had witnessed. His silence could not have been due to fear of reprisals because he belonged to an armed force the prime function of which was to arrest and prosecute felons and outlaws. The trial court committed no error in not giving credence to defendant's evidence that he reported the crime to his commanding officer in Tarlac. Had he done that it is certain that arrests would have been made and prosecution started sooner than late in 1946.

The defendant's conduct before, during and after the execution of the crime conclusively warrants the conclusion that he was in concert with Magno, Ledesma et al. Regardless of who actually killed the now deceased, the appellant, as a party to the conspiracy, is criminally and civilly liable for the crime.

Finding no merits in the appeal, we affirm the judgment of the court below by which appellant was sentenced to *reclusión perpetua,* to pay the heirs of the deceased as indemnity ₱2,000, and to pay the costs, except that the indemnity shall be ₱6,000. The appellant will also pay the costs of appeal.

Moran, C. J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, and *Montemayor, JJ.,* concur.

Judgment modified, indemnity increased

[Nos. L–1710 y L–1711. Diciembre 23, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* EPIFANIO MANABAT Y OTROS, acusados. FERNANDO MATUNAN, apelante.

1. DERECHO PENAL; ASESINATO Y ROBO EN CUADRILLA; PRUEBAS; DECLARACIÓN DE UN CÓMPLICE.—Es doctrina sana la que nos advierte que la declaración de un cómplice o coautor debe recibirse con mucha cautela. (E. U. *contra* Remigio, 37 Jur. Fil., 625; Pueblo *contra* Castañeda 63 Jur. Fil., 511.) Pero no nos impide aceptarla como buena si el testigo, teniendo en cuenta su manera de declarar y las circunstancias bajo las cuales tuvo conocimiento de los hechos de que habla, nos convence, fuera de toda duda, que está diciendo la verdad.
2. DERECHO Y PROCEDIMIENTO CRIMINAL; EL TESTIGO Y NO EL ACUSADO ES EL QUE DEBE INVOCAR EL CUMPLIMIENTO DEL ARTÍCULO 9, REGLA 115.—El testigo y no el acusado es el que debe invocar el cumplimiento del artículo 9, Regla 115 porque es el perjudicado: tiene derecho a pedir que se le acuse y que se sobresea la querella en cuanto a él antes de prestar su declaración como testigo del gobierno. Su falta de cumplimiento, le pone en la situación de estar en peligro de ser acusado por los hechos que ha de declarar; hecha la declaración, ya no podría retractar, con éxito, todo cuanto haya dicho. En esa tesitura, el testigo tiene que obrar naturalmente de acuerdo con su propia seguridad y no de acuerdo con la conveniencia del gobierno. Si ha de declarar una mentira, lo hará para asegurar su salvación y no para que el ministerio fiscal obtenga pruebas contra él.
3. DERECHO PENAL; ASESINATO Y ROBO EN CUADRILLA; TESTIGO; DECLARACIÓN DE UN CÓMPLICE; FALTA DE CONFIRMACIÓN.—La falta de confirmación de la declaración de un cómplice afecta a su credibilidad como testigo, pero no afecta a su competencia. y si su declaración satisface al Tribunal, fuera de duda razonable, la misma es suficiente.
4. ID.; ID.; CONSPIRACIÓN, PRUEBAS DE LA.—No es necesario que se pruebe que alguien lo haya propuesto y que los demás lo hayan aceptado. No siempre se puede presentar pruebas en tal sentido. El acuerdo unánime de matar y robar, no importa cómo comenzó y quién propuso, es bastante: es la conspiración misma.
5. ID.; ID.; CIRCUNSTANCIAS AGRAVANTES DE ALEVOSÍA Y PREMEDITACIÓN.—Es evidente que con alevosía se mató a T. P. y por tal circunstancia cualificativa se convierte el homicido en asesinato. No concurre premeditación conocida porque la orden de matar a ella fué una resolución de última hora: fué un acto ordenado por el jefe y ejecutado por P bajo el temor de que podían llegar los policías militares. Si la secuestraban, era un gran impedimento para la fuga; si la soltaban, podía ser utilizada como testigo. Entonces había que matarla. Esta determinación fué una malhadada inspiración del momento de miedo y confusión; por tanto, no puede ser considerada como agravante.

APELACIÓN contra dos sentencias del Juzgado de Primera Instancia de Nueva Écija. Enriquez, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. José L. Africa en representación del apelante.

El Procurador General Auxiliar Sr. Ruperto Kapunan, Jr. y *el Procurador Sr. Ramón L. Avanceña* en representación del Gobierno.

PABLO, *M.:*

Se trata de dos causas que fueron vistas juntamente: una por robo en cuadrilla y otra por asesinato. Son acusados Epifanio Manabat y otros 17. Después de declarar un testigo en la vista celebrada en 20 de Febrero de 1946, a petición de la defensa de la mayor parte de los acusados, se pospuso la vista hasta nuevo señalamiento. En 13 de Abril de 1946, se fugaron los acusados de la cárcel provincial de Nueva Écija. Solamente Fernando Matunan, el apelante, fué el que se rindió a las autoridades, y se reanudó la vista en cuanto a él. Los otros no habían sido arrestados aún.

Por la primera querella, Fernando Matunan fué condenado a reclusión perpetua, a indemnizar a los herederos de la finada Teófila Puno en la cantidad de ₱2,000 y pagar las costas correspondientes, y en cuanto a la segunda causa, fué condenado a 6 años, 10 meses y 1 día de prisión mayor, a indemnizar a la parte ofendida en la cantidad de ₱15,670 y pagar las costas correspondientes. Fernando Matunan apeló.

Las pruebas demuestran que en la noche del 13 de Noviembre de 1945, unos 300 Hukbalahaps, armados con varias clases de armas de fuego, al mando de Epifanio Manabat alias Malvar asaltaron la casa del alcalde Ernesto Villaromán en el municipio de Licab, Nueva Écija, con el propósito de matarle y robar sus propiedades por haber demostrado abierta hostilidad a la organización a que ellos pertenecían. Situados a los tres lados de la casa, dispararon tiros contra ella. El alcalde correspondió el tiroteo con su revólver, pero cuando ya le quedaban pocas balas se escapó pasando por un agujero en los bajos de su casa, parte trasera. Se quedó en la casa Teófila Puno, querida del alcalde. Creyendo tal vez que el dueño de la casa había sido muerto ya, 5 Huks, Magpayo, Balagtas, Montecarlo y Montenegro bajo la dirección de Epifanio Manabat saquearon la casa llevando consigo ₱4,000 en dinero; varios pares de zapatos avaluados en ₱200; dos revólveres, ₱300; un reloj (Lord Elgin), ₱120; alhajas, ₱10,000; telas para venta y ropas, ₱1,200; hacen un total de ₱15,820. Teófila Puno fué secuestrada y apenas había llegado al pie de la escalera sujetada por dos, ella preguntó: "Qué hemos hecho para que ustedes nos traten de esta manera?" Para frustrar cualquiera revelación que pudiera hacer ella, el jefe de los 5 Huks ordenó a sus secuaces que le mataran y en efecto, Pili disparó un tiro y dejó a ella desplomada enfrente de la casa de Cándido Valdez a unos 150 metros de distancia a la casa del alcalde. Inmediatamente, el jefe Matunan ordenó la desbandada de su gente, que podían llegar los policías militares. El cadáver de Teófila Puno fué llevado a su casa al amanecer y su hija fué hallada en el canal.

Buenaventura Liwag ha tenido participación en la comisión del crimen y no fué incluido como uno de los acusados y que no se cumplió el artículo 9, Regla 115 en cuanto a su presentación como testigo de cargo.

Cuanto al primer punto, podemos decir que es doctrina sana la que nos advierte que la declaración de un cómplice o coautor debe recibirse con mucha cautela. (E. U. *contra* Remigio, 37 Jur. Fil., 625; Pueblo *contra* Castañeda, 63 Jur. Fil., 511). Pero no nos impide aceptarla como buena si el testigo, teniendo en cuenta su manera de declarar y las circunstancias bajo las cuales tuvo conocimiento de los hechos de que habla, nos convence, fuera de toda duda, que está diciendo la verdad. Hay acaso mejor testigo, mejor delator, o mejor narrador de los hechos ocurridos, como aquél que tomó parte, directa o indirectamente, en su realización, ya como coautor, ya como cómplice? La confesión de un asesino, no viene también de una fuente inmunda? Sin embargo, se admite como prueba. Y es que, hay acaso mejor prueba contra él como su propia confesión? Un tercero puede mentir para perjudicar a un acusado; pero un coautor de un delito, bajo la amenaza de una futura acusación, no mentirá para proporcionar pruebas al fiscal para acusarle. Si un coautor ha de mentir, lo hará para su beneficio y no para que admita y confiese su participación criminal. En otras palabras, si ha de tergiversar los hechos criminales en que tuvo participación, lo hará para salvarse de cualquiera acusación que pudiera presentarse contra él y no para asegurar su propia condena. En Estados Unidos *contra* Enríquez, 40 Jur. Fil., 640, este Tribunal dijo:

"De las disposiciones contenidas en los dos preinsertos artículos (artículos 1 y 2 de la Ley Núm. 2709) no cabe inferir que, para que puedan ser presentados como testigos de la acusación con el fin de demostrar la certeza del delito y la culpabilidad de su autor, no es preciso ni necesario que dichos individuos sean antes comprendidos en la querella, aun cuando resultaren indicios de haber tenido los mismos participación en la comisión del hecho punible.

"El funcionario del Ministerio Fiscal se halla en libertad de presentar como testigos, en apoyo de la acusación, a todos los individuos que creyere que como presentes o enterados de la perpetración del delito pudieren declarar la verdad de lo sucedido, sin que sea óbice para hacerlo que hubiera indicios o presunciones de que los mismos o algunos de ellos fueran cómplices o hayan tenido participación en el hecho delictivo, ni es necesario e indispensable que fuesen antes acusados o comprendidos en la querella para que, excluídos después, puedan declarar como testigos de la acusación contra el acusado.

"Podría no contar el Fiscal con prueba bastante para acusar contra persona determinada que, según informes que haya recibido, tuvo participación o tomó parte en la comisión del delito y en tal situación, no infringe ninguna ley procesal presentándole como testigo de la acusación sin ser antes incluído en la querella, para ser excluído después, siempre que pueda el mismo testificar en el proceso." (*Véase también* Pueblo *contra* Parcón, 55 Jur. Fil., 1039.)

no el acusado es el que debe invocar el cumplimiento del artículo 9, Regla 115 porque es el perjudicado: tiene derecho a pedir que se le acuse y que se sobresea la querella en cuanto a él antes de prestar su declaración como testigo del gobierno. Su falta de cumplimiento, le pone en la situación de estar en peligro de ser acusado por los hechos que ha de declarar; hecha la declaración, ya no podría retractar, con éxito, todo cuanto haya dicho. En esa tesitura, el testigo tiene que obrar naturalmente de acuerdo con su propia seguridad y no de acuerdo con la conveniencia del gobierno. Si ha de declarar una mentira, lo hará para asegurar su salvación y no para que el ministerio fiscal obtenga pruebas contra él. En el caso presente no hay más que dos posibles testimonios: el de cualquiera de los que tomaron parte en el asalto y el del alcalde. Si Buenaventura Liwag no hubiera declarado la verdad, la acusación no tendría más que el testimonio del alcalde sin corroboración; en cambio, declarando la verdad, como declaró, se le puede acusar aun, y su declaración que es confesión de su participación no tiene defensa posible. Si a pesar de todo eso, quiso ser testigo, su declaración—si no inspira la menor duda—debe ser aceptada como buena. Bajo tales circunstancias, el Juzgado *a quo* no erró al concluir que Buenaventura Liwag ha dicho la verdad. "La falta de confirmación de la declaración de un cómplice afecta a su credibilidad como testigo, pero no afecta a su competencia. Y si su declaración satisface al Tribunal, fuera de duda razonable, la misma es suficiente." (Estados Unidos *contra* Callapag, 21 Jur. Fil., 270.)

La defensa sostiene que fuera de las declaraciones de Buenaventura Liwag y de Ernesto Villaromán sobre la presencia del apelante durante el asalto, no hay prueda de que haya tomado parte en la conspiración de robar y matar al alcalde. Y a falta de esta prueba, arguye la defensa, el apelante no debe ser responsable de los actos de los demás como coautor, sino solamente de su acto personal.

Buenaventura Liwag declaró:

"Fiscal:

"Q. On the night of November 13, 1945, where were you?—A. We were near the dam. (paligue.)

"Q. What were you doing there?—A. We were preparing to go to the Mayor's house.

"Q. What is the name of the Mayor?—A. Villaroman, sir.

* * * * * * *

"Q. What were you preparing?—A. We prepared our arms in going to the house of Villaroman, Mayor of Licab.

"Q. What was your purpose in going to the house of Mayor Ernesto Villaroman?—A. He was to be robbed and killed, robbed of all his belongings.

"Q. How many were you more or less?—A. About 300 more or less." (Pages 2–3, t.n.t.)

Esta prueba es bastante en nuestra opinión para concluir que todos tenían el propósito definitivo de matar y robar al alcalde de Licab, y la causa de esta determinación fué la abierta hostilidad del alcalde a su organización. No es necesario que se pruebe que alguien lo haya propuesto y que los demás lo hayan aceptado. No siempre se puede presentar pruebas en tal sentido. El acuerdo unánime de matar y robar, no importa cómo comenzó y quién propuso, es bastante: es la conspiración misma. Los actos ejecutados después por ellos,—tiroteo, robo, secuestro de Puno y su muerte de un tiro, a sangre fría—que constan plenamente probados en autos son suficientes datos para llegar a la forzosa conclusión de que ellos de común acuerdo, ayudándose mutuamente y obrando juntos bajo la dirección de Epifanio Manabat, cometieron los delitos de robo en cuadrilla y el asesinato de Teófila Puno.

"No es esencial la prueba directa para demostrar la conspiración. 'No hace falta demostrar que las partes se reunieron real y efectivamente y acordaron expresamente perseguir un común propósito. La existencia del asentimiento de las mentes, que es la base de una conspiración, puede deducirse y, por lo general, debe deducirse, dado el carácter secreto del delito, de la prueba de los hechos y circunstancias que, tomados en su conjunto, indican que son partes meramente de un todo completo. Si se prueba que dos o más personas dirigieron sus actos hacia la realización de un mismo objeto ilícito, ejecutando cada uno una parte, de suerte que sus actos, aunque aparentemente independientes, fueron de hecho unidos y cooperativos, indicando intimidad de asociación personal y concurrencia de sentimiento, se puede inferir la existencia de una conspiración aunque no se prueba que hubo reunión entre ellos para concertar medios. * * *' Los detalles de la conspiración no necesitan probarse. Si se demuestra una comunidad de propósito entre las partes de realizar algún acto o actos criminales, no es necesario que los actos imputados, o sobre los cuales se han presentado pruebas, fueron específicamente considerados o incluídos en el plan original. (Underhill's on Criminal Evidence.)

En la querella por asesinato, se alegaron las circunstancias agravantes de alevosía y premeditación conocida. Es evidente que con alevosía se mató a Teófila Puno y por tal circunstancia cualificativa se convierte el homicidio en asesinato. No concurre premeditación conocida porque la orden de matar a ella fué una resolución de última hora: fué un acto ordenado por el jefe y ejecutado por Pili bajo el temor de que podían llegar los policías militares. Si la secuestraban, era un gran impedimento para la fuga; si la soltaban, podía ser utilizada como testigo. Entonces había que matarla. Esta determinación fué una malhadada inspiración del momento de miedo y confusión; por tanto, no puede ser considerada como agravante. (E. U. *contra* Bañagale, 24 Jur. Fil., 73). La pena de reclusión temporal está de acuerdo con la ley.

La querella por robo no alega ninguna circunstancia agravante. Sin embargo, las pruebas demuestran que el delito

se cometió en cuadrilla; por tanto, la pena que debe imponerse al acusado es la de prisión correccional a prisión mayor en su grado medio. (Artículo 294, pár. 5, en relación con el artículo 14, pár. 6, Cód. Pen. Rev.); pero como se fugó de la cárcel provincial, no tiene derecho a una pena indeterminada (Ley 4225, artículo 2).

Se confirman las dos sentencias apeladas con costas.

Moran, Pres., Parás, Feria, Bengzon, Briones, Tuason, y *Montemayor, MM.,* están conformes.

PERFECTO, *J.*, dissenting:

As regards the killing of Teofila Puno there is only one witness: Buenaventura Liwag.

He testified that he saw her when "she was already on the road," where she was brought by Pili, after some of the assailants had come down from the house of Mayor Villaroman. She complained "Why are you doing this to us?" Malvar, the commander of the group, also known by the name of Epifanio Manabat, is the one who talked after her. He "directed us to proceed as we might be overtaken." (6). The assailants scampered, "each one for himself, and I joined the unit of Pili."

Teofila was taken by Pili to some distance "in front of the house of one Candida Valdes," where, following an order of Malvar, "she was shot by Pili." "After Pili shot Mrs. Villaroman (Teofila Puno), we were ordered by Malvar to disperse as we might be overtaken by the MPs, so I went direct home."

"Fiscal: When Malvar ordered the shooting of Mrs. Villaroman, where was Fernando Matunan?—He was ahead of us as we were at the rear when the order of Malvar to shoot Mrs. Villaroman was given. (7).

"Court: Immediately before the shooting of the wife of Mr. Villaroman, where was Fernando Matunan in relation to the group?—He was ahead of us, Sir.

"Court: With specific relation to the killing, do you know where he was?—I did not see him, Sir, because he went ahead of us."

No other witness or evidence was presented at the trial as to how Teofila Puno was killed. Consequently, we must abide by the lone version given by Buenaventura Liwag and, under this version, there is absolutely no way of exacting from appellant Fernando Matunan any responsibility for the killing of Teofila Puno.

The effect of the evidence for the prosecution is to show that when Malvar gathered the group of assailants, he advised them that the purpose was to assault the house of Mayor Ernesto Villaroman, to rob him of his belongings, and to kill him. The group of about 300 assailants went to the house of Villaroman, exchanged shots with the latter, and some of them entered the house and took out cash, jewelry, clothing, personal belongings and sacks of cereal. Sometime after those who entered the house came down,

being held by Pili. She asked why such thing was being done to her, and at that time Malvar, the leader of the assailants, ordered the dispersal of the group, as the MPs may arrive. Fernando Matunan was among those who left ahead of the others. When Malvar ordered Pili to shoot Teofila, Matunan was already so far away that Liwag could not see him anymore and could not tell in what specific place he could be, and when Pili shot Teofila, Matunan was still farther away.

It is evident that the killing of Teofila Puno has never been considered by anyone of the assailants, much less talked about, but only after the assailants had scampered away, each one for himself, and when Matunan was already far away. Not only had Matunan nothing to do with the killing, but it was physically impossible for him to have a previous or coetaneous knowledge of the order of Malvar to shoot the victim and the immediate compliance of the order by Pili.

We agree with the majority decision that Matunan has been sufficiently identified as one among the 300 assailants who assaulted the house of Mayor Villaroman, but there is absolutely no evidence on record to show that he has in any way been connected with the killing of Teofila Puno.

We agree with the decision in so far as it finds Matunan guilty of robbery in band and as to the sentence imposed upon him, but it would be an unjustifiable miscarriage of justice not to acquit Fernando Matunan of the crime of murder for the killing of Teofila Puno. Our vote is for his acquittal of said crime.

Se confirman las sentencias

[No. L-2055. December 24, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* EDUARDO CANASTRE, defendant and appellant

1. CRIMINAL LAW; ROBBERY IN BAND WITH RAPE; EVIDENCE; PHYSICIAN AND PATIENT; ABSENCE OF PHYSICAL EXAMINATION; WEIGHT OF TESTIMONY BETWEEN YOUNG AND UNMARRIED OFFENDED GIRL AND PHYSICIAN.—It is hard to believe that a young unmarried girl would make such a revelation and allow an examination of her private parts and thereafter permit herself to be the subject even of a public trial, if she was not motivated solely by a desire to have the culprits apprehended and punished. And the persuasive weight of this circumstance is such as to negative the importance of the testimony of Dr. P to the effect that there were no lacerations, abrasions or rashes in the genital organ of B that indicated forcible sexual intercourse.
2. ID.; ID.; MEDICAL JURISPRUDENCE; EVIDENCE; SEXUAL INTERCOURSE; ABSENCE OF EXTERNAL SIGNS.—No laboratory test was made to discover whether any male sperm was present in her organ which was not examined internally, and Dr. M. C., Health Officer

of the City of Iloilo, testified that the absence of external signs cannot definitely be a basis for concluding that a woman did not have a sexual intercourse.

3. ID.; ID.; EVIDENCE; ALIBI AS A DEFENSE.—The defense of alibi cannot of course prosper in the face of the positive identification of the appellant by the prosecution witnesses who had not been shown to have any reason for falsely imputing to the appellant so grave a crime as that of which he was convicted. Considering that the night was clear and the appellant used his flashlight, no mistake could have been made in his identity, especially in view of the fact that he was personally known to them. Counsel for appellant thinks that the latter would not have turned on his flashlight in order merely to reveal his identity, but he forgets that that step was necessary to accomplish their plan. He undoubtedly wanted to be sure that the person they tied to the wall was the father and that the person they were to take and rape under the mango tree was B.

APPEAL from a judgment of the Court of First Instance of Iloilo. Makalintal, J.

The facts are stated in the opinion of the court.

Roberto J. Ignacio for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Guillermo E. Torres* for appellee.

PARÁS, *J.:*

Eduardo Canastre, Gil Sayuco, Francisco Pasaporte *alias* Francisco Pastera, and Gonzalo Fabilona were charged in the Court of First Instance of Iloilo with the crime of robbery in band with rape. After trial, Francisco Pasaporte and Gonzalo Fabilona were acquitted, but Eduardo Canastre and Gil Sayuco were found guilty of robbery with rape and sentenced, the first to an indeterminate penalty of from 10 years and 1 day, *prisión mayor,* to 17 years, 4 months and 1 day, *reclusión temporal,* and the second to an indeterminate penalty of from 17 years, 4 months and 1 day to 20 years, *reclusión temporal,* both with the accessory penalties prescribed by law and both to pay one-half of the costs. Only Eduardo Canastre has appealed, Gil Sayuco having after the commencement of the trial escaped from detention and being still at large.

We have gone over the entire record and are fully convinced that the following facts have been established: At about one o'clock in the morning of June 28, 1946, the appellant and Gil Sayuco, together with two unidentified companions, came to the house of Magdaleno Beri in barrio Batuan, municipality of Pototan, Province of Iloilo. The appellant immediately turned on his flashlight towards the inmates, whereupon Magdaleno inquired for the identity of the intruders. In answer, the appellant pointed his gun to Magdaleno with the warning for him and his companions not to move and with the threat of death if they did otherwise. After tieing Magdaleno to the wall, the appellant entered the room of Benedicta

Beri, a 17-year old daughter of Magdaleno. The appellant, who directed his flashlight to Benedicta, dragged the latter out and, with the aid of Gil Sayuco, he brought her downstairs under a mango tree. Notwithstanding the girl's cries for help, her father and mother could not come to her rescue, the first being then tied to the wall and the second having been pushed away whenever she attempted to intervene. In spite of Benedicta's resistance, the appellant, with the help of his three companions, was able to have sexual intercourse with Benedicta. Gil Sayuco then took his turn in raping the girl, followed in succession by the other two companions. Not contented with merely satisfying their lust, the appellant, Gil Sayuco and another companion returned to the house and took away a rice bowl, some rice and four chickens, all worth about fifteen pesos.

Aside from alleging that the appellant did not leave his house during the night of June 28, 1946, because he had diarrhea, his counsel contends that he is at least entitled to the benefit of a reasonable doubt, in view of the failure of the witnesses for the prosecution to identify the other two companions of the appellant and Gil Sayuco—which led to the acquittal of co-accused Francisco Pasaporte and Gonzalo Fabilona. It is thus insinuated that such failure engenders a doubt as to whether said witnesses (especially Benedicta Beri) told the truth when they incriminated the appellant.

The defense, however, had supplied a persuasive argument in favor of the theory of the prosecution when defense witness, Dr. Engracio Parreñas, District Health Officer of Iloilo City, admitted that on June 30, 1946, Benedicta complained to him that she was raped by four men and submitted herself to a physical examination. It is hard to believe that a young unmarried girl would make such a revelation and allow an examination of her private parts and thereafter permit herself to be the subject even of a public trial, if she was not motivated solely by a desire to have the culprits apprehended and punished. And the persuasive weight of this circumstance is such as to negative the importance of the testimony of Dr. Parreñas to the effect that there were no lacerations, abrasions or rashes in the genital organ of Benedicta that indicated forcible sexual intercourse. Moreover, no laboratory test was made to discover whether any male sperm was present in her organ which was not examined internally, and Dr. M. Cartagena, Health Officer of the City of Iloilo, testified that the absence of external signs cannot definitely be a basis for concluding that a woman did not have a sexual intercourse.

The defense of alibi cannot of course prosper in the face of the positive identification of the appellant by the prosecution witnesses who had not been shown to have any

reason for falsely imputing to the appellant so grave a crime as that of which he was convicted. Considering that the night was clear and the appellant used his flashlight, no mistake could have been made in his identity, especially in view of the fact that he was personally known to them. Counsel for appellant thinks that the latter would not have turned on his flashlight in order merely to reveal his identity, but he forgets that that step was necessary to accomplish their plan. He undoubtedly wanted to be sure that the person they tied to the wall was the father and that the person they were to take and rape under the mango tree was Benedicta.

Being in accordance with the law and the facts, the appealed judgment is affirmed, it being understood, however, that the appellant shall indemnify Benedicta Beri in the sum of one thousand pesos.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L-1652. December 29, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FERMIN SUAREZ (*alias* CULUPING) ET AL., defendants. ATILANO MALLARI (*alias* SALICSIC), OSCAR SANTOS and ALFREDO TAYAG (*alias* EDONG), appellants.

1. CRIMINAL LAW; KIDNAPPING; ESSENTIAL ELEMENT.—The essential element or act which makes the offense of kidnapping is the deprivation of an offended party's liberty under any of the four instances enumerated in article 267, paragraph 1, of the Revised Penal Code, the illegal detention of the victim for more than five days being one of such instances.

2. ID.; ID.; COPRINCIPAL THRU DIRECT PARTICIPATION.—The fact that an accused person has directly participated in the kidnapping or illegal detention of another is sufficient to make him guilty as coprincipal in the crime of kidnapping; it is immaterial whether or not the victim was subsequently killed by any or all of them. In the present case there is no doubt that the appellants had taken active part in the kidnapping of E. M. and that the acts committed by them has made them guilty as coprincipals. The fact that they may have not taken part in the subsequent killing of E. M. has only the effect of making them less guilty than those who actually took part in the killing,—but they are guilty just the same.

APPEAL from a judgment of the Court of First Instance of Tarlac. Nolasco, J.

The facts are stated in the opinion of the court.

Delfin A. Viola for appellants.

Assistant Solicitor General Inocencio Rosal and *Solicitor Felix V. Makasiar* for appellee.

PERFECTO, *J.*:

Before November 22, 1946, Esteban Mungcal and his wife Ambrosia Valencia had returned to their house in barrio Talaga, municipality of Capas, Tarlac, where they used to live and from which they had previously evacuated together with all the other residents of the place who until that date had not yet returned. At about 8 o'clock in the night of November 22, 1946, when Ambrosia was in her house already lying down in bed, she was awakened by several armed men who were looking for her husband. Among those persons were appellants Oscar Santos, Alfredo Tayag, and Atilano Mallari, with whom she was well acquainted because they also used to be residents of that barrio. After she had told them that Esteban Mungcal was out, they left and went westward towards the direction of a dike. Apprehensive of what those armed men were going to do to her husband, she followed them. On the way the men met her husband, and two of them immediately held Esteban Mungcal by his hands and they told him to go along with them. At first Esteban refused to follow, but Oscar Santos told him that they would kill him if he would not go with them. So, Esteban had to keep quiet and follow. Ambrosia and her husband were afraid because the kidnappers were carrying firearms with them. Although Ambrosia cried, she could not do anything as her only companions then were her children. They took Esteban Mungcal in the direction of Karamatan, a hilly place in Capas. The next morning Ambrosia reported the matter to her brother-in-law, Pablo Mungcal.

Several months later, and upon indication of Fermin Suarez and Atilano Mallari, two of the accused, the remains of Esteban were recovered. Ambrosia recognized the remains to be that of her husband because of the positions of the missing upper and lower teeth and of the gray hair on the skull which was shown to her. Cenon Mungcal, son of Esteban, was likewise able to recognize the remains to be that of his father because of the positions of the missing teeth and the gray hair on the skull, and because of the initials CBM on the clothes he was wearing and which was given by him to his father.

The record of this case also shows that Oscar Santos had thumbmarked a written statement on April 30, 1947, before the Mayor of Capas, Victor Tison, (Exhibit E) and another one on May 5, 1947, before the Justice of the Peace of Capas, Francisco B. Sanchez (Exhibit A–1); that Alfredo Tayag had thumbmarked a written statement on May 4, 1947, before Mayor Tison (Exhibit B), and the next day another one before Justice of the Peace Sanchez (Exhibit A–2); and that Atilano Mallari had

thumbmarked a written statement on April 30, 1947, before Mayor Tison (Exhibit C), and another on May 5, 1947, before Justice of the Peace Sanchez (Exhibit A). All these documents were introduced as part of the evidence for the prosecution, and admitted by the trial court. In all of their statements, the appellants invariably admitted having participated in the taking away of Esteban Mungcal, although they denied having participated in the killing, which, according to these statements, was perpetrated without their presence by Fermin Suarez *alias* Culuping, one of the accused who pleaded guilty during the trial and who was sentenced to an indeterminate penalty of from eight (8) years and one (1) day of *prisión mayor* to fourteen (14) years, eight (8) months and one (1) day of *reclusión temporal*

During the trial, Atilano Mallari declared that he belonged to the Hukbalahap organization, where he was known by the name of Salicsic. Similarly, Oscar Santos declared that he was a member of the Hukbalahap before he had surrendered; while Alfredo Tayag also declared that he belonged to the same organization.

There is no doubt in our minds that all the appellants participated in the kidnapping of Esteban Mungcal. This fact is sufficiently established by the clear and convincing testimony of Ambrosia Valencia an eyewitness to the commission of the crime. Ambrosia could not have been mistaken as to the identity of the three appellants because she was already well acquainted with them, even before November 22, 1946,—they had been residing with her in the same barrio of Talaga,—and, at the time the kidnapping took place, she had the opportunity to see and talk to them, for they even asked her for her husband. Moreover, there is nothing in the record to show why Ambrosia should make any false imputation against the appellants. Our conviction as to the guilt of the appellant is further clinched by the written statements, thumbmarked by them (Exhibits A, A–1, A–2, C, D and E), which contain admissions of their guilt.

The defense tried to show that the appellants were not with the band who kidnapped Esteban Mungcal, that the appellants did not make the declarations contained in the written statements they had thumbmarked, and that they were merely compelled to thumbmark them because of threats and torture inflicted upon them by Cenon Mungcal and others, even showing to the trial court some scars of the wounds supposedly inflicted upon them to compel them to admit participation in the kidnapping.

To support the appellants' contention that they did not take part in the kidnapping, they offered their own testimony and that of Fermin Suarez, who declared that the kidnapping was done by one De Hora together with a companion, and Suarez himself. Their testimony are,

however, contradicted by the very admissions of the appellants contained in their written statements, Exhibits A, A–1, A–2, C, D and E. Of course, by the testimony of Mariano Santos and Elias Mallari, the defense attempted to prove maltreatment as the principal cause of their giving these statements; but their assertions are belied by the testimony of the witnesses for the prosecution,—Chief of Police Salvador Baun, policeman Cenon Mungcal, Mayor Victor L. Tison and Justice of the Peace Francisco D. Sanchez,—whose veracity has not been impeached.

But even without totally precluding the possibility that the appellants may have been actually maltreated to a certain extent, still there are convincing evidence in the record which shows that the testimony of Ambrosia revealed the truth. The facts contained in those written statements could not have been given by any one else but by the appellants themselves. The remains of the victim were, according to the witnesses for the prosecution, found upon indication of the accused Atilano Mallari himself. This fact is substantially corroborated by the testimony of Fermin Suarez himself when he stated that Atilano Mallari was present when the remains of Esteban Mungcal were being exhumed, although he claimed that he (Suarez), not Atilano, was the one who pointed to the police authorities the place where the deceased was buried by his killers.

From the facts proven, it appears evident that the three appellants are guilty of the crime of kidnapping, penalized under paragraph 1, article 267 of the Revised Penal Code, as amended by Republic Act No. 18, the pertinent portion of which reads as follows:

"ART. 267. *Kidnapping and serious illegal detention.*—Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusión temporal* in its maximum period to death:

"1. If the kidnapping or detention shall have lasted more than five days."

"* * * * * * *"

Counsel for the appellants contends that these should be convicted only as accomplices. He claims that, there being no evidence to show that they had taken part in a conspiracy to kill Esteban Mungcal,—because, according to the evidence for the defense, after De Hora, his companion and Fermin Suarez had hogtied Esteban Mungcal, the appellants were left in a house and had nothing to do with the killing of Esteban,—they cannot be held guilty as coprincipals of the crime of kidnapping. This contention is, however, based on the erroneous assumption that the fact of the killing of Esteban Mungcal constituted the principal element of the offense for which the appellants were prosecuted before, and found guilty by, the trial court. But the appellants were not accused of the murder or the killing of Esteban; they were accused of kid-

napping, as defined and punished under article 267, paragraph 1, of the Revised Penal Code. The essential element or act which makes the offense of kidnapping is the deprivation of an offended party's liberty under any of the four instances enumerated in said article, the illegal detention of the victim for more than five days being one of such instances. The fact that an accused person has directly participated in the kidnapping or illegal detention of another is sufficient to make him guilty as coprincipal in the crime of kidnapping; it is immaterial whether or not the victim was subsequently killed by any or all of them. In the present case there is no doubt that the appellants had taken active part in the kidnapping of Esteban Mungcal and that the acts committed by them has made them guilty as coprincipals. The fact that they may have not taken part in the subsequent killing of Esteban Mungcal has only the effect of making them less guilty than those who actually took part in the killing,—but they are guilty just the same. As above stated, the appellants should therefore be held liable as coprincipals in the crime of kidnapping penalized under article 267, paragraph 1, as amended, of the Revised Penal Code.

The offense is attended by the aggravating circumstance of having been committed with the aid of armed men, which is offset by the mitigating circumstance of lack of instruction. The trial court sentenced each of the appellants to the penalty of *reclusión perpetua* with the accessory penalties prescribed by law and to pay proportionately the costs of the proceedings. This penalty is in accordance with law, and we find no reason for modifying the same. The trial court, however, failed to provide for an indemnity to be paid to the heirs of the victim, Esteban Mungcal, which it should have done. Consequently, as recommended by the prosecution, the appellants are ordered to pay jointly and severally to the heirs of the deceased the sum of ₱6,000 (People *vs.* Amensec, G. R. No. L–927, 45 Off. Gaz. [Supp. to No. 9], 51). With this modification, the appealed decision is affirmed, with costs.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. L–1798. December 29, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* DOMINGO ACUSAR, MARCELINO ACUSAR, IGMIDIO ACUSAR, ANSELMO ACUSAR, and OTHERS UNKNOWN, defendants. DOMINGO ACUSAR and IGMIDIO ACUSAR, appellants.

1. CRIMINAL LAW; HOMICIDE; EVIDENCE; ALIBI AS A DEFENSE.—I, tried to establish an alibi, *alleging that in the morning of Au-*

gust 21, 1946, he went to the town of Cuenca to look over a bull he was intending to purchase from F. D. He was accompanied by his son, M, and both started from Cuenca to their home at about 1 o'clock in the afternoon and, therefore, he could have not taken part in the assault that caused the death of G. V. M. A. and F. D. testified to corroborate him but the lower court has correctly rejected the defense. *Held:* That the testimonies of the three witnesses for the prosecution appear to be more reliable. No improper motive was shown why laborers F. O. and C. A. would have falsely imputed to I active participation in, and the commencement of, the assault against G. V.

2. ID.; ID.; ID.; WITNESSES; ESSENTIAL FEELING OF RIGHTEOUSNESS IS A REALITY THAT CANNOT BE IGNORED.—The defense does not deny, but admits that O and A were in the scene of the incident and were eyewitnesses to the wounding of R and the killing of G. It is unquestioned that the whole incident took place in the presence of other persons, aside from those who testified at the trial, and if the accusation against I were false, there should not be any doubt that among those many persons there would have been one or more who, not enduring to see an innocent falsely accused of a crime he has not committed, would have come in the open to testify in court and champion his cause. The more or less widespread cynicism notwithstanding, human experience has conclusively shown that the essential feeling of righteousness in the average human being is a reality that cannot be ignored.

3. ID.; ID.; EVIDENCE SHOULD TALLY WITH COMMON KNOWLEDGE AND OBSERVATION OF MANKIND.—It is unbelievable that in such a long struggle narrated by D, the latter should come out without a single scratch on the skin, while R should suffer so many wounds. Not even extreme ability in fencing can explain such an extraordinary result, considering that R was not a weakling. On the contrary, his survival from the many wounds he received is an evidence that he was endowed with unusual vitality. According to Dr. S, two back wounds of R and one on his thigh were caused by a sharp instrument like a knife, not a bolo. The three wounds belie completely the story of D.

4. ID.; ID.; INDICTMENT AND INFORMATION; ABSENCE OF ALLEGATION OF QUALIFYING CIRCUMSTANCE.—The abuse of superior strength to make the crime murder, not having been alleged in the information, should only be considered as aggravating circumstance for the crime of homicide.

5. ID.; ID.; INTENTION TO KILL; GRAVITY OF WOUND INFLICTED.—D's intention to kill was manifest, he and his co-assailants having used deadly weapons such as bolos and knives. As a matter of fact, they left R for dead. But as Dr. S, witness for the prosecution, has expressed the doubt that the wounds suffered by R would, without medical assistance, have caused his death, the Solicitor General is of opinion that the crime committed by D is only attempted homicide.

APPEAL from a judgment of the Court of First Instance of Batangas. Angeles, J.

The facts are stated in the opinion of the court.

Reyes & Agcaoili for appellants.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Manuel Tomacruz* for appellee.

PERFECTO, *J.*:

At about eleven o'clock in the morning of August 21, 1946, the brothers Domingo and Marcelino Acusar went to the U. S. Army Ammunition Depot at barrio Balete, Batangas, to which formerly they used to go to gather some firewood. Domingo boarded a truck, used by the depot for carrying trash, when it was about to move out. After the truck had traveled some distance, about fifty meters, Domingo threw out from the truck three spades. Upon seeing it, Romero Velasquez, the foreman of the depot, ordered the laborers to take the spades. Laborer Francisco Orense went running to pick them up, Marcelino coming behind him, evidently in a race to reach for the spades. Orense placed the spades among the implements used in the depot.

At about twelve o'clock that same day, accompanied by Anselmo Acusar, another brother, Domingo returned to the depot and asked the laborers, who were then taking their noontime rest, who took the three spades. Orense answered that he was the one on orders of the foreman. At this juncture Romero approached the group and was asked by Domingo who ordered the taking of the spades. Romero answered that he was the one because, as foreman, he was responsible for them. Domingo demanded that the spades be given to him because he had promised them to somebody else. Romero rejected the demand, alleging that the spades were placed under his care and responsibility, he had signed receipts for them and he would be accountable for their loss. Domingo insisted in his demand and Romero in his refusal.

The discussion became heated, and Domingo went to one side where he picked a bolo and with it he hacked twice Romero at the back. Romero fell down. Although he was able to stand up once, he fell down again under the continued attacks of Domingo, who was helped by his brothers Anselmo and Marcelino, both using knives to wound Romero. One of the assailants said that Romero should be left alone because he was dying, and Romero was left alone lying wounded on the ground.

At the time he was being attacked, an old man, Gregorio Velasquez, father of Romero and who was in the depot as one of the laborers, had been shouting to the assailants to leave alone his son because he was not offering any resistance. Upon noticing it, Igmidio Acusar, father of Domingo, came down from his house, accompanied by two persons not identified in the record, went directly towards Gregorio and started pounding him with the butt of a rifle, while his two companions beat the old man with *bakawan* sticks.

After leaving Romero alone and upon seeing what was happening where Gregorio Velasquez was, Domingo, An-

selmo and Marcelino, each armed with a crowbar that they picked lying among the empty boxes, joined their father in beating Gregorio Velasquez and when the latter was about to fall, Domingo hacked him once on the back with a bolo. Gregorio fell unconscious and the assailants fled.

As a result of the affray, Gregorio Velasquez died a few minutes after his arrival in the Station Hospital of the American Army in Batangas, due to multiple and severe fractures of the skull, which appeared like an egg that had been pounded and battered to pieces by blows. The deceased had received an incised wound on the shoulder.

The right thumb of Romero Velasquez was severed and he suffered several wounds. He had to stay for many days in the hospital, less than a month, and had an additional two-week medical treatment at the dispensary after he left the hospital.

The facts of the case, as above narrated, have been conclusively proved. Direct participation of Domingo and Igmidio Acusar in causing death of Gregorio Velasquez and of Domingo in almost killing Romero Velasquez, has been established by the testimonies of Francisco Orense and Crisanto Atienza.

Igmidio tried to establish an alibi, alleging that in the morning of August 21, 1946, he went to the town of Cuenca to look over a bull he was intending to purchase from Fausto Dipasupil. He was accompanied by his son, Marcelino, and both started from Cuenca to their home at about 1 o'clock in the afternoon and, therefore, he could have not taken part in the assault that caused the death of Gregorio Velasquez. Marcelino Acusar and Fausto Dipasupil testified to corroborate him but the lower court has correctly rejected the defense. The testimonies of the three witnesses for the prosecution appear to be more reliable. No improper motive was shown why laborers Francisco Orense and Crisanto Atienza would have falsely imputed to Igmidio active participation in, and the commencement of, the assault against Gregorio Velasquez.

The defense does not deny, but admits that Orense and Atienza were in the scene of the incident and were eyewitnesses to the wounding of Romero and the killing of Gregorio. It is unquestioned that the whole incident took place in the presence of other persons, aside from those who testified at the trial, and if the accusation against Igmidio were false, there should not be any doubt that among those many persons there would have been one or more who, not enduring to see an innocent falsely accused of a crime he has not committed, would have come in the open to testify in court and champion his cause. The more or less widespread cynicism notwithstanding, human experience has conclusively shown that the essential feeling

of righteousness in the average human being is a reality that cannot be ignored.

Domingo tried to show by his own testimony, unsupported by any other witness, that in wounding Romero he acted in self-defense, but not one of the many actors and witnesses of the whole incident corroborated him. He said that between Romero and himself there was exchange of words and counter-charges as thieves for the pilferage of goods in the depot and that Romero, provoked by the counter-accusation against him, drew out an open knife and tried to stab Domingo who evaded the blow and ran away. But Romero chased him until Domingo was able to hold a bolo which was on top of some boxes. There was a scuffle. While Romero suffered many wounds and lost his right thumb, Domingo, due to his dexterity in fencing, was able to come out unscathed.

The inverisimilitude of Domingo's version is apparent. It is unbelievable that in such a long struggle narrated by Domingo, the latter should come out without a single scratch on the skin, while Romero should suffer so many wounds. Not even extreme ability in fencing can explain such an extraordinary result, considering that Romero was not a weakling. On the contrary, his survival from the many wounds he received is an evidence that he was endowed with unusual vitality. According to Dr. Schrank, two back wounds of Romero and one on his thigh were caused by a sharp instrument like a knife, not a bolo. The three wounds belie completely the story of Domingo.

The lower court found the two appellants guilty of murder for the death of Gregorio Velasquez and found Domingo guilty of serious physical injuries caused to Romero Velasquez. The Solicitor General is of opinion that the crime committed for the killing of Gregorio should not be considered murder but homicide. The abuse of superior strength to make the crime murder, not having been alleged in the information, should only be considered as aggravating circumstance for the crime of homicide. As regards to the attack on Romero, the Solicitor General maintains that, from the evidence, Domingo's intention to kill was manifest, he and his co-assailants having used deadly weapons such as bolos and knives. As a matter of fact, they left Romero for dead. But as Dr. Schrank, witness for the prosecution, has expressed the doubt that the wounds suffered by Romero would, without medical assistance, have caused his death, the Solicitor General is of opinion that the crime committed by Domingo is only attempted homicide. The position of the Solicitor General is well taken. Igmidio is responsible as principal of homicide for the slaying of Gregorio. Both prosecution and defense, correctly agreed that Domingo should only be

found guilty as accomplice in the homicide, there being no conspiracy and his contribution being a mere lacerated wound on the shoulder of the deceased which was described by Dr. Schrank as moderate and not fatal.

Accordingly, Igmidio Acusar is sentenced to an indeterminate penalty of from six years and one day of *prisión mayor* to seventeen years, four months and one day of *reclusión temporal,* and Domingo Acusar, as accomplice in the crime of homicide, to suffer an indeterminate penalty of from two years, four months and one day of *prisión correccional* to eight years and one day of *prisión mayor,* and as principal of the crime of attempted homicide, to suffer from one month and one day of *arresto mayor* to two years, four months and one day of *prisión correccional.*

For the loss of the right thumb of Romero Velasquez, the latter shall be indemnified by Domingo Acusar in the sum of ₱500, and both Igmidio and Domingo Acusar shall indemnify jointly and severally the heirs of the deceased Gregorio Velasquez, as recommended by the prosecution and in accordance with the doctrine laid down in People *vs.* Amansec (L–927, 45 Off. Gaz., [Supp. to No. 9], 51), in the sum of ₱6,000, and to pay the costs.

Moran, C. J., Parás, Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.,* concur.

Judgment modified.

[No. 1306–R. Julio 12, 1948]

LIDRADO BOLIVAR, demandante y apelado, *contra* AQUILINO CORTES, demandado y apelante

1. PRUEBAS; PAGO DE AMILLARAMIENTO NO ES PRUEBA CONCLUYENTE DE DOMINIO.—Es constante jurisprudencia, la de que el pago de amillaramiento no es prueba concluyente de dominio; y el hecho de que C. B. tuvo su casa en el terreno en consideración, tampoco es prueba suficiente que demuestre su dominio exclusivo del mismo.
2. PRÁCTICA FORENSE; DEMANDA DE REIVINDICACIÓN; NO DEBE SER SOBRESEIDA POR INTITULARSE "PARTICIÓN."—Una demanda denominada "partición" no debe ser sobreseida aunque asi se intitula cuando de las alegaciones de las partes contendientes resulta claro que la acción entablada es de reivindicación. Cierto es que el Juzgado inferior ordenó en la decisión apelada que se proceda a la partición del terreno descrito en la demanda, pero eso se debe a que se probó que el referido terreno era una propiedad proindivisa, y en interés de las partes y para evitar multiplicidad de acciones procedía que se ordenase su partición como así se ordenó, sin que por eso se pueda considerar como de partición la acción ejercitada en esta causa. (Centeno *vs.* Centeno, 52 Phil., 343.)

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Capiz. Díaz, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Jose Y. Torres y *Querubin Cortes* en representación del apelante.

Sr. Santiago Abella en representación del apelado.

ENDENCIA, *M.:*

Los hechos que dieron lugar a la incoación de la presente causa y que según las pruebas aportadas en juicio resultan indubitables, pueden sintetizarse en los siguientes:

Librado y Cresente, apellidados Bolivar, son hijos de Esperidión Bolivar y Juana Reyes. A su muerte, Esperidión dejó un terreno situado en Mandong, en el municipio de Batan, Provincia de Capiz, que pasó a manos de sus referidos hijos, que lo ocuparon y poseyeron en mancomún hasta la muerte de Cresente en que le sustituyó su hijo Macario Bolivar. El terreno descrito en la demanda, situado en el municipio de Batan, Provincia de Capiz, y cuya identidad no se discute, era originariamente de la propiedad de Juana Reyes que, a su muerte, 1° dejó a sus hijos antes mencionados. No hubo ninguna repartición formal entre Cresente y Librado de las dos parcelas de terreno que heredaron de sus padres, aunque

Cresente, en virtud de las escrituras de 25 de Junio de 1945 y 10 de Junio de 1945 (Exhíbitos 5 y 6) vendió el terreno en litigo, como de su exclusiva propiedad, al demandado apelante Aquilino Cortes. Como después de la venta Aquilino quisiera tomar posesión del referido terreno y encontrara oposición de parte de Librado Bolivar que alegaba tener derecho de propiedad y posesión de la mitad del mismo, Aquilino demandó por usurpación a Librado y a otras personas en el Juzgado de Paz de Batan, Capiz, demanda que se sobreseyó por falta de jurisdicción de dicho juzgado por hallarse envuelta la cuestión de propiedad. No obstante el sobreseimiento de la referida causa, Aquilino entró en posesión del terreno en cuestón, y por esta razón Librado promovió la presente causa para recobrar de aquél, no todo el susodicho terreno sino lo mitad de él, alegando como fundamento que dicho terreno no era de la propiedad exclusiva de Cresente sino heredado en común por ambos hermanos de su difunta madre Juana Reyes, y que por tanto, una mitad del mismo debía de corresponder a Librado y la otra a Cresente.

Vista la causa, el Juzgado de Primera Instancia de Capiz la falló en favor del demandante Librado Bolivar, siendo la parte dispositiva de la decisión como sigue:

"Por tanto, el Tribunal declara que una mitad del terreno aqui cuestionado es de la propiedad del demandante Librado Bolivar y la otra mitad pertenece al demandado Aquilino Cortes. Se condena al demandado a pagar al demandante la suma de ₱75 por gastos incurridos por éste por la siembra de palay correspondiente al año de 1945 y se condena, asimismo, al demandado a pagar al demandante siete (7) cavanes de palay al año como participación de éste de la porción que le corresponde desde el año de 1945 hasta que dicho demandante pueda recobrar la posesión y usufructo de la mitad del terreno arriba descrito. Se condena, igualmente, al demandado a pagar las costas.

"Una vez firme esta decición, las partes someterán al Tribunal dentro de 15 días los nombres de dos personas que actuen como comisionados y procedan a la división del terreno en dos partes iguales. Los gastos de la división correrán a cuenta de los litigantes en partes iguales.

"Asi se ordena."

No estando conforme con esta decisión, el demandado perfeccionó su apelación y así se elevó la causa a este Tribunal, en donde el demandado alega que el juzgado inferior erró:

"1. Al no sobreseer la demanda de autos por el fundamento de que la misma no expone suficientes motivos de acción contra el demandado-apelante.

"2. Al no declarar que Cresente Bolivar llegó a ser dueño del terreno en cuestión por haberlo poseido pública, pacífica, continua y de una manera adversa por más de 20 años desde que su padre se lo adjudicó, adjudicación que fué más tarde confirmada mediante un convenio habido entre Cresente Bolivar y su hermano Librado Bolivar.

"3. Al no declarar que la parcela total situada en el barrio de Mandong, Batan, Capiz, era la participación de Librado Bolivar en la herencia de sus padres, y que el terreno en cuestión era la participación de Cresente Bolivar.

"4. Al no declarar al demandado apelante Aquilino Cortes dueño del terreno en cuestión en virtud de las escrituras de venta, Exhíbitos 5 y 6, otorgadas a su favor por Cresente Bolivar.

"5. Al condenar al demandado-apelante a pagar al demandante-apelado los daños causados más las costas.

De un examen detenido de los alegatos de ambas partes, aparece que la controversia se reduce a si el terreno en litigio era de la propiedad exclusiva de Cresente Bolivar al tiempo de su venta al demandado-apelante, o si el demandante-apelado era dueño de su mitad proindiviso y, por tanto, con derecho a recobrarlo y reclamar los daños alegados en la demanda.

El demandante sostiene que el terreno en cuestión lo heredaron él y su hermano Cresente de su madre Juana; que además del terreno en cuestión, él y su hermano Cresente heredaron de su padre Esperidión Bolivar otro, ubicado en el barrio de Mandong; que él y su hermano poseyeron en común ambos terrenos, los cuales aun no se han repartido; que al tiempo del otorgamiento de las escrituras de venta (Exhíbitos 5 y 6) a favor del demandado Aquilino Cortes, Cresente Bolivar no era dueño de todo el terreno en litigio, sino solamente de una mitad proindivisa del mismo, y que por consiguiente Cresente Bolivar no tenía derecho de venderlo todo al aqui demandado; que la mitad proindivisa del terreno en cuestión se puso en garantía por Cresente a favor de Remigia Bautista para responder del pago de 15 cavanes de palay que Cresente le adeudaba; que el 31 de Marzo de 1943 Remigia Bautista cedió a Librado Bolivar, mediante pago de 15 cavanes y 12 gantas de palay, todos sus derechos en el gravamen que tenía sobre la mitad del terreno en cuestión, y de ese modo el gravamen pasó a manos de Librado Bolivar; que estando éste en posesión de todo el terreno, su hermano Cresente lo vendió al demandado, y éste, inmediatamente después de la venta, o sea el mes de Noviembre de 1945, ocupó todo el terreno causando así al demandante daños montantes a 24 cavanes de palay por cada año agrícola a partir del mes y año mencionados.

Por su parte, el demandado contiende que el terreno en cuestión era de la exclusiva propiedad de Cresente Bolivar y que éste lo poseyó como suyo, de una manera pública, pacífica, sin interrupción y contra todo el mundo, por más de 20 años; que en la repartición de los bienes dejados por Esperidión Bolivar y su esposa Juana Reyes el terreno en litigio le correspondió a Cresente Bolivar, y el terreno ubicado en Mandong, al demandante Librado Bolivar; que esa repartición tuvo lugar el año 1922, y que desde entonces cada uno de los hermanos se posesionó como dueño exclusivo de sus respectivos terrenos; que

después de la citada repartición Cresente construyó casa y residió en su dicho terreno, y Librado, en el terreno situado en Mandong; y que cada uno de ellos amillaró a su nombre su respectivo terreno y pagó por él la correspondiente contribución territorial.

De lo expuesto aparece que la cuestión cardinal que se debe determinar es si hubo o no repartición entre los hermanos de los bienes dejados por sus padres, pues si la hubo y esa repartición se hizo en la forma que el demandado pretende, no podría negarse que Cresente había adquirido derechos exclusivos de propiedad sobre el terreno en cuestión, y tendría, por tanto, derecho a venderlo en su totalidad al aqui demandado. Mas si esa repartición jamás tuvo lugar, el derecho del demandante a la mitad proindivisa del susodicho terreno sería innegable, y consiguientemente tendría derecho a recobrarla del referido demandado. Es hecho probado que Cresente Bolivar tiene su participación en el terreno en Mandong, que es la parte que actualmente ocupa su hijo Macario. Si como pretende el demandado hubo repartición y en la misma le correspondió a Cresente Bolivar el terreno en litigio y a Librado Bolivar el terreno situado en Mandong, no se explica el que Cresente tenga parte en el terreno en Mandong.

El demandante declaró que ese terreno en Mandong no es suyo exclusivo sino de él y de su hermano Cresente, y que él y Cresente lo han estado poseyendo en común hasta la muerte de éste, en que su hijo Macario le sucedió en la tenencia y ocupación de la mitad del terreno correspondiente a su padre. El demandante negó que hubo repartición de bienes entre él y su hermano Cresente y que el terreno en litigio le correspondiera a Cresente. Asímismo negó que Cresente Bolivar lo poseyera exclusivamente, y alegó que cuando Cresente Bolivar lo dió en garantía a Remigia Bautista, dió a ésta solamente la mitad de dicho terreno. Estas declaraciones del demandante estan debidamente sostenidas por las de sus testigos Remigia Bautista, Cirilo Alborte y Simplicio Leuterio, y no han sido refutadas, de ahí que no creemos que se haya hecho repartición alguna del terreno en cuestión, y, por tanto, declaramos que Cresente Bolivar no tenía derecho de venderlo totalmente al demandado. Aún más, acerca de esa alegada repartición no declaró por el demandado más que Raymunda Cortes, viuda de Cresente Bolivar, quien aseveró que dicha repartición se hizo por escrito el año 1922 y se redactó por un tal Pitong. Pero a este señor no se le ha llamado a declarar en esta causa, ni se ha explicado por qué no se le ha presentado como testigo, lo cual enerva el testimonio de Raymunda.

Por otro lado, resulta del testimonio no contradicho del demandante que en el año de 1922 vivía aun Esperidión Bolivar, por lo que no es de creer que el demandante

y su hermano Cresente se hayan repartido los bienes de aquél. Teniendo en cuenta todos estos hechos encontramos inverosímil la declaración de Raymunda Cortes de que en el referido año de 1922 Librado y Cresente se repartieron los bienes de Esperidión Bolivar y Juana Reyes, y que en dicha repartición correspondió a Cresente el terreno en litigio. Además, a Macario Bolivar, ocupante de la mitad del terreno en Mandong, no se le llamó para desmentir este hecho o corroborar el testimonio de su madre en cuanto a la presunta repartición y adjudicación del terreno en cuestión a Cresente Bolivar. Asímismo, de ser cierto que hubo tal repartición y adjudicación, lo más natural sería que ni Cresente Bolivar ni sus descendientes tuvieran ya participación en el terreno en Mandong, lo que no es así, y de ahi que creamos que la alegada repartición de los bienes de Esperidión Bolivar y Juana Reyes, que el demandado invoca, no tuvo jamás lugar.

En cuanto a la prescripción basada en la posesión adversa que, según el demandado, Cresente Bolivar tuvo del referido terreno, basta decir que las pruebas no la demuestran; al contrario las pruebas indican que tal posesión no fué adversa al demandante, y consiguientemente, no sirve de base para una prescripción adquisitiva.

El apelante alega, sin embargo, que Cresente Bolivar residió y tuvo siempre su casa en el terreno en cuestión, que lo amillaró a su nombre, y que por tanto debía considerarsele como dueño exclusivo del citado terreno. Es constante jurisprudencia, sin embargo, la de que el pago de amillaramiento no es prueba concluyente de dominio; y el hecho de que Cresente tuvo su casa en el terreno en consideración, tampoco es prueba suficiente que demuestre su dominio exclusivo del mismo.

"In determining when possession may be considered as adverse according to American doctrines and jurisprudence, which must be taken into account in interpreting and applying section 41 of Act No. 190, it has been held in the case of Warfield *vs.* Lindell (90 Am. Dec., 443), that acts which in case of a stranger would be deemed adverse, may not be such as among the coheirs. In the case of Hart *vs.* Gregg (36 Am. Dec., 166), wherein several heirs were fighting for a piece of land proceeding from a common predecessor, the following doctrines were laid down: "Entry by one cotenant or copartner inures to the benefit of all and cannot become adverse without some unequivocal act amounting to an actual disseizin or ouster of the cotenants. Perception of rents and profits by one cotenant, and erecting fences and buildings adapted for the cultivation of the common land, do not amount to disseizin of the other contenants: so, it seems, even though the receipts of the rents and profits is accompanied by a claim of title to the whole land." * * * Thus in the case of McClung *vs.* Ross (5 Wheat. (U. S.), 116), the Supreme Court of the United States, speaking through Chief Justice Marshall held that a silent possession, accompanied with no act which can amount to an ouster of his cotenant, or give notice to the latter that his possession is adverse, ought not to be construed into an adverse possession.

defendant against those alleging as owners of the thing usurped, the evidence relative to the possession as a fact, upon which said alleged prescription is based, must be clear, complete and conclusive in order to establish said prescription without the shadow of a doubt; and when upon the trial such was not the case and when the possessor has not proven that his possession of the property in question is exclusive and adverse and that he has opposed the right of the plaintiffs over the thing held in common, the action has not reached the characteristic of an action for the recovery of the ownership of realty but only that of petition or partition of an inheritance." (Bargayo *vs.* Camumot, 40 Phil., 859.)

Y si a esto se añade el hecho irrefutable de que el heredero de Cresente Bolivar tiene su parte en el terreno en Mandong, que prueba que no hubo tal repartición entre los hermanos, no podemos menos de concluir que Cresente no poseyó como dueño exclusivo el terreno cuestionado y por tanto no llegó a ser dueño absoluto y exclusivo del mismo.

El apelante, en uno de sus señalamientos de error, sostiene con vigor que se debe sobreseer la presente causa porque la acción que el demandante ejercita es de partición, lo que presupone comunidad de derechos, y que en el presente asunto no existe tal comunidad, puesto que hay disputa acerca de la propiedad del terreno en cuestión. Examinando la demanda se ve claramente que la acción ejercitada por el demandante es de reivindicación, aunque solo de la mitad proindivisa de la propiedad que reclama como suya y de la que pide que se le declare como dueño. Por su parte, en su contestación el demandado niega esta alegación del demandante y en su petitoria solicita que todo el terreno en litigio se declare como de su propiedad exclusiva. En vista de las alegaciones de las partes, resulta claro que la acción entablada por el demandante es de reivindicación, por lo que la contención del demandado de que el juzgado incurrió en error al no sobreseer la demanda por ser de partición, carece de base, y no debe tenerse en cuenta. El demandado también arguye que la presente acción es de partición, porque la causa así se intitula. La denominación de la naturaleza de la acción que se da en la demanda es realmente de partición; con todo, creemos que habida consideración a las alegaciones de la demanda y su petitoria, la acción es de reivindicación y no de partición. Cierto es que el Juzgado inferior ordenó en la decisión apelada que se proceda a la partición del terreno descrito en la demanda, pero eso se debe a que se probó que el referido terreno era una propiedad proindivisa, y en interés de las partes y para evitar multiplicidad de acciones procedía que se ordenase su partición como así se ordenó, sin que por eso se pueda considerar como de partición la acción ejercitada en esta causa.

"An action cannot be considered as one for the partition of an inheritance, even though it is so entitled and the prayer of the

complaint is to this effect, if any party to the suit denies the *pro indiviso* character of the estate whose partition is sought, and claims exclusive title thereto, or to any part thereof. In such case the action becomes one for the recovery of property in so far as the property claimed exclusively by any of the parties is concerned.

"What this court meant in saying that an action cannot be considered as one for the partition of an inheritance, even though it is so entitled and the prayer of the complaint is to this effect, if any party to the suit denies the *pro indiviso* character of the estate whose partition is sought, is that when the existence of coownership is not recognized by all the parties, but that some claim to be exclusive owners thereof, and it is found that there is no property to partition, the action for partition loses its character as such and becomes one for the recovery of property; but when the action is for the recovery of property based upon the annulment of a partition and at the same time for the partition of the property declared to be undivided common property, it is not improper to order the partition of the estate which has been declared to be undivided common property, since there is no incompatibility between the action for the recovery of property and for partition of an inheritance, once the court has declared that the property, the recovery of which is sought, belongs to the parties in common and *pro indiviso*." (Centeno *vs.* Centeno, 52 Phil., 343.)

En cuanto a los daños y perjuicios adjudicados al demandante, que son objeto del quinto señalamiento de error, somos de parecer que las pruebas obrantes en autos justifican plenamente la decisión del Juzgado inferior. La declaración del demandante sobre los productos de la mitad del terreno que le corresponde, no está refutada, y de su testimonio aparece que esa mitad solía producirle anualmente 5 cavanes de palay. El demandante dejó de percibir este beneficio desde noviembre de 1945 en que el demandado-apelante usurpó el terreno en cuestión, por lo que es de justicia que el demandante sea resarcido de esa pérdida.

En la decisión apelada se condena también al demandado a pagar al demandante la suma de ₱75 por los gastos en que éste incurrió por la preparación del terreno para la siembra de palay del año agrícola de 1945. Consta de la declaración del demandante que por la preparación del terreno y las semillas de palay en dicho año agrícola gasto ₱150. No hay en los autos prueba en contra de esta declaración, de ahi que esta reclamación del demandante por semillas de palay y gastos de preparación del terreno debe ser concedida. Sin embargo, creemos que él no tiene derecho al reembolso de la cantidad total de ₱150, pues la mitad de esta cantidad se ha invertido en la preparación y semillas de la mitad del terreno en cuestión que debe corresponderle, y por esa mitad ya se le adjudica 5 cavanes de palay por cada año agrícola; de lo contrario, el demandante sería doblemente compensado.

Por tanto, se confirma la decisión apelada en cuanto declara al demandante dueño de la mitad proindivisa

del terreno descrito en la demanda, y ordena el pago de la suma de ₱75, pero se enmienda la misma en cuanto a la cantidad de palay que el demandado debe pagar al demandante, la que se reduce a 5 cavanes de palay, o su valor en plaza, por cada año agrícola a partir del año de 1945 hasta que dicho demandante recobre la posesión y usufructo de la mitad del terreno en cuestión; y apareciendo que en interés de los derechos de las partes se debe ordenar la partición formal del terreno descrito en la demanda, para que pueda determinarse la respectiva mitad que debe corresponder a cada parte, se confirma también la decisión apelada en cuanto provee a dicha partición. Con las costas a cargo del apelante. Así se ordena.

Torres y *Felix, MM.*, están conformes.

Se modifica la sentencia.

[No. 1841-R. August 16, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANTONIO LAVADIA, defendant and appellant

EVIDENCE; ANTE-MORTEM STATEMENT; FAILURE OF DECLARANT TO STATE THAT HE HAD LOST HOPE OF RECOVERY; EFFECT OF.—For the validity or admissibility of a dying declaration, it is not necessary that the declarant expressly stated that he had lost all hope of recovery; it is sufficient that the circumstances are such as to lead inevitably to the conclusion that at the time the declaration was made the declarant did not expect to survive the injury from which he died (People *vs.* Ancasan, 53 Phil., 779; People *vs.* Reyes, 52 Phil., 541; People *vs.* Cruz, 53 Phil., 625; People *vs.* Abedosa, 53 Phil., 788).

APPEAL from a judgment of the Court of First Instance of Leyte. Enriquez, J.

The facts are stated in the opinion of the court.

Filomeno Montejo for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Angeles* for appellee.

DIZON, *J.:*

This is an appeal from the decision of the Court of First Instance of Leyte finding Antonio Lavadia guilty of homecide and sentencing him to suffer an indeterminate penalty of not less than one (1) year of *prisión correccional* nor more than six (6) years and one (1) day of *prisión mayor,* to indemnify the heirs of the deceased Eugenio Villegas, Jr. in the sum of ₱2,000 and to pay the costs. Appellant's counsel now contends that the lower court committed the following errors:

I

"The lower court erred in giving credit to the testimony of Aquilino Tupa, the only witness for the prosecution.

II

"The lower court erred in convicting the appellant to one year *of prisión correccional* as minimum, and six years and one day of *prisión mayor*, to indemnify the heirs of the deceased, Eugenio Villegas, Jr. the sum of two thousand pesos, and to pay the costs."

It being admitted by the appellant that he shot the deceased Eugenio Villegas, Jr. to death, it is incumbent upon him to prove his plea of self-defense by clear and convincing evidence (People *vs.* Gutierrez, 53 Phil., 609). In this connection he attempted to prove that, obeying orders of his superior officer, Lieut. Eugenio Villegas, Sr., he went to the latter's headquarters in Dulag, Leyte, where he met the deceased Eugenio Villegas, Jr. Having asked him where his father was Eugenio Villegas, Jr., in a harsh manner, asked him, in turn, what he wanted from his father, and when to this he replied that he had some business to transact with his father, Villegas, Jr. retorted: "Why don't you tell me, I am his son." As the appellant refused to do so because he was not his superior officer the deceased became angered and after telling him "You are chiplado, why don't you tell me," he picked up a pistol and shot him. Upon being hit the appellant exclaimed "Agui!" (Oh!), and put his left hand on the wound and asked his assailant why he had shot him, but the latter continued levelling his gun at him. In view of this attitude of the deceased the appellant then grabbed an automatic pistol from a nearby table and with it shot and killed his assailant.

The theory of the defense is too inherently improbable to merit serious consideration. In the first place, it portrays Eugenio Villegas, Jr. as a character so violent and unreasonable that, after unsuccessfully inducing the appellant to reveal to him what business he had come to transact with his father, he became enraged to the extent of shooting him without further reason or provocation. Our efforts to find in the record some evidence tending to show at least some probability that the deceased could have really acted in the manner stated have all been in vain. Fortunato Garcia, a defense witness who claimed to have known the deceased since childhood, was not able to mention any incident showing more or less his violent character. On the other hand if, as claimed by the appellant, the deceased, after hitting him on the breast, kept on levelling the pistol at him, the appellant would not have had any opportunity to pick up an automatic pistol from a nearby table with which to kill his assailant. The latter could have easily done away with him before he could have approached the table where the automatic pistol was.

We find the evidence for the prosecution as to the circumstances surrounding the incident to be clear and convincing. Aquilino Tupa, whose candor and integrity

greatly impressed His Honor, the trial Judge, testified that at about 5 o'clock p.m. on May 21, 1945 he was at the headquarters of Lieut. Eugenio Villegas, Sr. where he saw the appellant and Eugenio Villegas, Jr. "playing with a pistol." A short time thereafter, while he was outside of the headquarters, he heard a shot from the inside and when he looked towards said direction he "saw Antonio Lavadia putting his hand on his breast" saying "Alagad dao" (Oh my!), while Eugenio Villegas, Jr. was standing by with a revolver in his hand. As Lavadia was about to fall the deceased put the revolver on a table and after he had done so the appellant picked it up and fired at him. This tallies with the ante-mortem statement Exhibit B thumbmarked by the deceased several hours before he died.

There might be some doubt as to whether or not the aforesaid statement should be considered as ante-mortem in view of the fact that when questioned as to whether or not he thought he would die the deceased answered "may be", but considering the fatal nature of his wound, the fact that, at that time, he was already too weak to sign the statement, for which reason he was merely made to thumbmark the same, and in view of the further fact that he actually died 15–1/2 hours thereafter, we believe that the aforesaid statement is admissible as ante-mortem statement. For the validity or admissibility of a dying declaration, it is not necessary that the declarant expressly stated that he had lost all hope of recovery; it is sufficient that the circumstances are such as to lead inevitably to the conclusion that at the time the declaration was made the declarant did not expect to survive the injury from which he died (People *vs.* Ancasan 53 Phil., 779; People *vs.* Reyes 52 Phil., 541; People *vs.* Cruz 53 Phil., 625; People *vs.* Abedosa 53 Phil., 788).

Upon all the foregoing we are of the opinion that the appellant has failed to prove convincingly that he acted in self-defense, the result being that the lower court committed no error in finding him guilty of the crime charged.

The lower court considered in favor of the accused three mitigating circumstances, namely: voluntary surrender, immediate vindication of a grave offense, and passion and obfuscation. We agree with the Solicitor General that passion and obfuscation must be understood as imbibed in the circumstance of immediate vindication of a grave offense. As to the circumstance of voluntary surrender, it is true that there is no positive evidence to establish the same, but inasmuch as there appears to have been no warrant issued for the arrest of the appellant and inasmuch as it also appears that he was immediately taken to the hospital after the shooting and remained under custody thereafter, we are inclined to resolve any doubt

upon this point in his favor. The penalty provided by law for the crime charged, which is that of *reclusión temporal,* should, therefore, be reduced to the next lower in degree, namely, *prisión mayor.* Applying to the case the provisions of the Indeterminate Sentence Law we find that the penalty imposed by the trial court is within the range of the penalty provided by law. The appealed judgment is therefore affirmed *in toto.*

Montemayor, Pres. J., and *Concepcion, J.,* concur.

Judgment affirmed.

[No. 1574–R. August 21, 1948]

ARTEMIO MALABAYABAS, plaintiff and appellant, *vs.* LEANDRO R. LOPEZ and NIEVES O. PALIS, defendants and appellants.

1. EVIDENCE; JUDICIAL NOTICE OF SHARE OF RICELAND OWNER.—The Court can take judicial notice of the fact that the share of the owner of ricelands in the produce is fifty per cent if he shares in the expenses, and thirty per cent if the tenant alone bears them. The share, therefore, of the owners in the 1945–1946 produce of the ricelands in question should be fixed at thirty cavans an agricultural year valued at ₱450 in 1946.
2. PLEADING AND PRACTICE; ACTION; FORCIBLE ENTRY AND DETAINER; MERE ALLEGATION OF OWNERSHIP DOES NOT CONVERT ACTION INTO ONE OF OWNERSHIP; CASE AT BAR.—In an action of forcible entry wherein complaint alleges possession as owner and entry by defendant through force, allegation of answer that defendant is owner does not convert it into one ownership (Sevilla *vs.* Tolentino, 51 Phil., 333). It is only when the question of ownership is so involved in that of possession that the action would be dismissed for want of jurisdiction as involving that of ownership. Possessor has the choice of remedy and when he choses that of forcible entry, this may not be converted into one of ownership when possessor's possession is clear.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Jose Y. Torres for plaintiff and appellant.

Zocimo D. Tanalega and *Rogelio Cruz* for defendants and appellants.

LABRADOR, *J.:*

This is an action of forcible entry and detainer originally instituted in the justice of the peace court of Los Baños, Laguna. The subject of the action is a parcel of land, more than two hectares in area, which originally belonged to Casimiro Malabayabas, father of the plaintiff. On May 12, 1941, Casimiro Malabayabas sold this parcel of land with the right of repurchase and for the amount of ₱1,800 to Leandro R. Lopez, who is married to the other defendant (Exhibits A and 1). By virtue of this sale,

defendants took possession of the property. On August 18, 1944, Casimiro Malabayabas redeem the property from Leandro R. Lopez (Exhibits A and 1), and on the following day he sold it, also with right to repurchase and for the amount of ₱5,000 to the spouses Artemio Malabayabas and Casiana Montenegro (Exhibit B).

The plaintiff alleges that he was in possession of the property as owner and peacefully until October 23, 1945, when the defendants entered on the same by force, threat, strategy, and intimidation. The defendants deny this allegation, and allege that they were in material, actual, peaceful, and uninterrupted possession since May 12, 1941, to the date of the filing of the action. As a special defense, the defendants claim that the land belongs to them, as they had bought it from plaintiff's father on May 12, 1941.

At the trial in the Court of First Instance, only the plaintiff presented his evidence, as the trial court dismissed the action after the presentation of plaintiff's evidence. Plaintiff's evidence is to the effect that upon its redemption from the defendants in the month of August, 1944, and its sale thereafter to plaintiffs, the land was entrusted to witness Juan Banasihan, who, as *encargado* of Artemio Malabayabas, in turn gave the land to Florencio Malabayabas. Florencio Malabayabas began working the land and planted rice thereon in the month of October, 1944, and in the month of February, 1945, he began harvesting the palay he had planted. Only one-half thereof was harvested as the harvesting of the rice was interrupted by air raids and the coming of the Americans. In the month of October, 1945, the defendant Nieves Palis and certain agents of hers entered upon the land to cultivate. Upon learning of this, Florencio Malabayabas informed Artemio Malabayabas thereof. The latter was then living in Batangas. Banasihan tried to suspend the work by the agents or laborers of Nieves Palis, but the laborers refused.

The evidence for the plaintiff also shows that plaintiff's laborers had fixed the irrigation canal leading to the land, that the land contains an area equivalent to two cavans of seedlings, and produces around one hundred cavans of rice valued in the years of 1945 and 1946 at ₱15 per cavan. The court can take judicial notice of the fact that the share of the owner of ricelands in the produce is 50 per cent if he shares in the expenses, and 30 per cent if the tenant alone bears them. The share, therefore, of the owners in the 1945–1946 produce should be fixed at thirty cavans an agricultural year valued at ₱450 in 1946.

On the basis of the above evidence, and without waiting for the defendants to present their own, the Court of First Instance of Laguna rendered judgment dismissing the complaint. The ground upon which this decision is

based is the absence of evidence that the defendants Leandro R. Lopez and Nieves O. Palis entered said property by "force, threat and strategy, and through intimidation," and "because the court is of the opinion that the question involved is more of ownership than possession" (Record on Appeal, pp. 3–4). We can not agree with the legal conclusion of the trial court, for it has long ago been settled in this jurisdiction that:

> "In order to constitute the use of 'force,' as contemplated in this provision, the trespasser does not have to institute a state of war. Nor is it even necessary that he should use violence against the person of the party in possession. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary. Under the statute entering upon the premises by strategy or stealth is equally as obnoxious as entering by force. The foundation of the action is really the forcible exclusion of the original possessor by a person who has entered without right. The words "by force, intimidation, threat, strategy or stealth" include every situation or condition under which one person can wrongfully enter upon real property and exclude another, who has had prior possession, therefrom. If a trespasser enters upon the land in open daylight, under the very eyes of the person already clothed with lawful possession, but without the consent of the latter, and there plants himself and excludes such prior possessor from the property, the action of forcible entry and detainer can unquestionably be maintained, even though no force is used by the trespasser other than such as is necessarily implied from the mere acts of planting himself on the ground and excluding the other party." (Mediran *vs.* Villanueva, 37 Phil., 756–757.)

And the mere fact that the defendants in their answer allege that they are the owners of the property, having bought the same from plaintiff's father on May 12, 1941, does not have the effect of converting the action into one involving ownership. Plaintiff has been in possession for over a year, from August, 1944, to October, 1945, and such possession has evidently been in good faith for the reason that his father had already repurchased the land from the defendants. Plaintiff could, under the facts and circumstances, institute either an action of forcible entry and detainer or an action for the recovery of title and possession. He chose the more expedient and summary remedy of forcible entry and detainer. As laid down in the case of Sevilla *vs.* Tolentino, 51 Phil., 333, this remedy has been provided for the protection of a possessor, not for the defense of an intruder. It is the possessor who should be allowed to decide whether to avail of such relief, and once he has decided to do so, the intruder should not be left with an instrument in his power (the excuse that a question of ownership is involved) by means of which he can thwart the possessor. It is only when the question of ownership is so necessarily involved with that of possession that it would be impossible to decide the question of possession without deciding that of owner-

ship, that an action of forcible entry and detainer would be dismissed for want of jurisdiction, because the question really involved is that of ownership (Ibid., p. 336).

We have examined the case of Josefa Fabie *vs.* Jose Gutierrez David, 42 Official Gazette, 511, cited by the appellees in their memorandum, but we find it to be an authority for, rather than against, the case at bar. In said case the owner was not the plaintiff, and he intervened on behalf of the defendant. Yet the court held that possession alone was at issue, and revoked a judgment dismissing the case for want of jurisdiction. The complaint herein does not disclose that plaintiff is bringing up the question of ownership for determination. He merely alleges that "as owner he was in actual and material possession of the property," and that the defendants "by force, threat, strategy, and intimidation took possession of the above-described land" (Complaint, Record on Appeal, p. 1). The incontradicted evidence conclusively shows plaintiff's previous actual possession for over a year and the intrusion of the defendants. Ownership is absolutely immaterial, therefore, for the maintenance of the action.

For the foregoing considerations, the judgment appealed from is hereby reversed, and the defendants-appellees are ordered to vacate the land in question and return its possession to the plaintiff, and pay to the latter as damages ₱450 for the years 1945–1946, and yearly thereafter thirty (30) cavans of rice or its value until said land is vacated. So ordered.

Reyes and *Paredes, JJ.*, concur.

Judgment reversed.

[No. 2235–R. August 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MARCELO LAPIDARIO, defendant and appellant

[No. 2234–R. August 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ARSENIO BALTAZAR, defendant and appellant

CRIMINAL LAW; PENALTY, APPLICATION OF, WHEN MODIFYING CIRCUMSTANCES ARE PRESENT; SETTLED RULE: MODIFYING CIRCUMSTANCES UNDER THE REVISED PENAL CODE, NOT AVAILABLE FOR OFFENSES PUNISHABLE UNDER SPECIAL LAWS.—True, some provisions of the Revised Penal Code were declared applicable to special laws by the Supreme Court but it is now a settled rule that the modifying circumstances under the Revised Penal Code are not available for offenses punishable under special laws. In two cases of illegal possession of firearm decided by the Supreme Court after the enactment of the Revised Penal Code, said ruling was laid down. [Pueblo *vs.* Juan Roque, G. R. No. 47561, promulgated on April 18, 1941 (Lawyers' Journal, June 15, 1941) and Pueblo *vs.* Reinaldo

Ramos y Linao, G. R. No. L-651, promulgated on April 30, 1947.] The rationale in the latter decision is that the discretion given to the trial judge by the special law regarding the imposition of penalties substitutes the rules of the Penal Code for the application of penalties. Th same ruling was enunciated by the Court of Appeals in a prosecution for illegal possession of firearm. (People *vs.* Villaluz, No. 1111-R, promulgated on September 9, 1947.)

APPEAL from a judgment of the Court of First Instance of Cavite. Santos, J.

The facts are stated in the opinion of the court.

F. M. Ejercito for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Abad Santos* for appellee.

GUTIERREZ DAVID, *J.:*

Marcelo Lapidario and Arsenio Baltazar were separately charged with illegal possession of firearm and ammunition in the Court of First Instance of Cavite (criminal cases Nos. 10390 and 10393). Upon arraignment, both pleaded guilty and moved for leave to adduce evidence to establish their lack of instruction and their appointments as special policemen for the determination of the penalty. After hearing and appreciating the testimonies of the defendants tending to show mitigating circumstances other than the plea of guilty, the lower court sentenced each of them to suffer the minimum penalty prescribed by law, to wit: 1 year and 1 day of imprisonment. Both defendants appealed.

Appellants' contention is that the lower court erred in not properly taking into account the mitigating circumstances of voluntary plea of guilty, lack of instruction and their appointments as special policemen, and in the imposition of the penalty.

It would appear that the trial court imposed the minimum penalty prescribed by law after taking into consideration the alleged mitigating circumstances. Its decision reads, in part, as follows:

"The counsel for the accused asked the permission of the Court to present evidence tending to show mitigating circumstances other than spontaneous plea of guilty; which the Court appreciated."

Concerning the correctness of the penalty, appellants contend that the trial court, taking into account three mitigating circumstances, namely, appellants' appointments as special policemen, their lack of instruction and education and voluntary plea of guilty, should have imposed only a penalty ranging from 4 months and 1 day to 8 months of imprisonment for each of the appellants. It is urged that in applying the penalty the court should have divided the whole period of 4 years comprised in the penalty of 1 year and 1 day to 5 years into three periods, the mini-

mum of which is from 1 year and 1 day to 2 years and 4 months, and that said minimum should have been subdivided into 3 periods of 4 months each, in consonance with article 64, section 5, and article 65 of the Revised Penal Code. Counsel claims that pursuant to article 10 of the Revised Penal Code, which provides that the Code shall be supplementary to special laws unless the latter should specifically provide the contrary, the above cited provisions of the Revised Penal Code regulating the application of penalties when modifying circumstances are present, should be applied to the cases at bar.

The contention of the appellants cannot be upheld. True, some provisions of the Code were declared applicable to special laws by the Supreme Court but it is now a settled rule that the modifying circumstances under the Revised Penal Code are not available for offenses punishable under special laws. In two cases of illegal possession of firearm decided by the Supreme Court after the enactment of the Revised Penal Code, said ruling was laid down. Pueblo *vs.* Juan Roque, G. R. No. 47561, promulgated on April 18, 1941 (Lawyers Journal, June 15, 1941) and Pueblo *vs.* Reinaldo Ramos y Linao, G. R. No. L–651), promulgated on April 30, 1947. The rationale in the latter decision is that the discretion given to the trial judge by the special law regarding the imposition of penalties substitutes the rules of the Penal Code for the application of penalties. The same ruling was enunciated by the Court of Appeals in a prosecution for illegal possession of firearm. People *vs.* Villaluz, No. 1111–R, promulgated on September 9, 1947.

Wherefore, finding no merits in the appeal, the Court affirms the decisions appealed from, with costs.

Jugo and *De la Rosa, JJ.*, concur.

Judgment affirmed.

[No. 2502–R. August 30, 1948]

LUPO D. CARLOTA and ELISA T. CARLOTA, petitioners, *vs.* Hon. FROILAN BAYONA, Judge of the Court of First Instance of Surigao et al., respondents.

PLEADING AND PRACTICE; CERTIORARI AND MANDAMUS; JOINDER OF PARTIES; PURPOSE OF SECTION 5, RULE 67, RULES OF COURT.—The purpose of section 5, Rule 67, of the Rules of Court, is not only to impose upon the respondent private parties the burden of bearing the expenses of the proceedings, in case the petitioner is entitled to the remedy prayed for by him, but mainly to give such private parties an opportunity to defend the order or judgment of the lower court rendered in their favor. Such being the case it would be unfair and unjust in this and similar cases to dispense compliance with the specific provisions prescribing the joinder, as parties defendant, of the person or persons interested in sustaining the actuations of the re-

spondent judge, and thus deprive them of their day in court (Black *vs.* Brinkley, 54 Ark. 372, 374; Luz *vs.* Court of First Instance of Leyte, 43 Off. Gaz., No. 10, pp. 4102–4104, Oct. 1947.)

ORIGINAL ACTION in the Court of Appeals. Certiorari and Mandamus.

The facts are stated in the opinion of the court.

Manuel O. Chan and *Montano A. Ortiz* for petitioners.

Cipriano C. Alvizo and *Sisenando Villaluz* for respondents.

FELIX, *J.:*

Antecedents.—The properties involved in civil cases Nos. 4 and 24 of the Court of First Instance of Surigao, from which these proceedings grew up, were sold at public auction by the Deputy Treasurer of that province, Mr. Atanacio Villarina for alleged delinquency in the payment of land taxes. Said properties are: a lot and building, covered by tax declaration No. 24386 in the name of Pio P. Chua, assessed at ₱5,220 and sold on June 17, 1941, to Elisa T. Carlota for the sum of ₱100; the parcels of land covered by tax declaration Nos. 27756, 27754 and 27755, also in the name of Pio P. Chua, alias Pio Chua Tongko, respectively assessed at ₱1,130, ₱1,860 and ₱7,000, also sold on June 19, 1941, to Elisa T. Carlota for the respective sums of ₱20.97, ₱34.51 and ₱129.85; and, finally, the parcel of land covered by Tax Declaration No. 24751 in the name of Modesta Plaza, assessed at ₱1,620 and sold to the same purchaser, Elisa T. Carlota, for the sum of ₱34.06.

On February 23, 1946, Chang Lao, Jaime Chua, Emilia Billona and Nenita Chua, the last one represented by Chang Lao as guardian *ad litem,* instituted in the Court of First Instance of Surigao an action, docketed as Case No. 4 of said court, against Lupo D. Carlota and Elisa T. Carlota, the herein petitioners. On November 23, 1946, the plaintiffs amended the complaint including the provincial treasurer of Surigao as party defendant. The purpose of the action was to annul the sale of the properties covered by tax declaration Nos. 24386, 27756, 27754 and 27755, adjudicated by said treasurer because the sale was not made in accordance with the requirements of Act No. 3984 and the procedure prescribed by law.

On October 28, 1946, Modesta Plaza, Celedonia Chua, Felipa P. Chua, Celerina Avila, Chang Lao, Jaime Chua, Emilia Billona and Nenita Chua, the latter represented by Chang Lao as guardian *ad litem,* filed before the Court of First Instance of Surigao, a complaint docketed as Case No. 24, against the herein petitioners and said Provincial Treasurer for the same purpose of annulling the sale of the property covered by Tax Declaration No. 24751.

After proper proceedings and by agreement of the parties, both cases Nos. 4 and 24, were jointly heard, and on September 8, 1947, the court rendered decision, the dispositive part of which is as follows:

"In view of the foregoing considerations, this Court is of the opinion and so holds that the sales made by the Deputy Provincial Treasurer, Mr. Atanacio Villarina, on June 17th, 1941, of the real property declared under tax declaration 24386 in the name of Pio P. Chua, and on June 19th of the same year of the real properties under tax declarations 27756, 27754 and 27755 in the name of Pio P. Chua, alias Pio Chua Tongko, in civil case No. 4; and of the property under Tax Declaration 24751 in the name of Modesta Plaza in civil case No. 24, are null and void and of no effect from the dates of said sales, and condemns the herein defendants to return to the plaintiffs the said properties, after the corresponding delinquent taxes and penalties shall have been paid for as prescribed by law, and defendants Elisa T. and Lupo Carlota to pay the sum of ₱167.80, balance in favor of plaintiffs after the damage claims of plaintiffs have been offset from the counterclaim of defendants by way of repairs and improvements of the house under Tax Declaration 24386, and to pay Modesta Plaza the sum of ₱510 value of the products of her coconut land under Tax Declaration 24751 received and enjoyed by defendants till the date of this decision. In the event of an illegal prolongation of the occupation and enjoyment of the products and rentals of said properties, to pay the value of the products and rentals as has been fixed by this decision, together with damages that plaintiffs may suffer by reason of the illegal continued occupation and costs."

Notice of this decision was sent on *September 29, 1947,* to the defendant spouses, who, on *November 10, 1947,* filed their motion for reconsideration and new trial, which was opposed by the plaintiffs on November 15, 1947, on the ground that the judgment, dated September 8, 1947, had already become final as shown by an alleged certificate of the postmaster of Surigao (Exhibit (A) to the effect that the *first notice* dated September 29, 1947, from said postmaster for registered letter No. 2897 (that contained the decision in said two cases) had been addressed to Mr. Jose Vasquez, attorney for said defendant spouses and delivered to him through his wife at their residence on September 30, 1947.

After hearing of this motion for reconsideration and new trial and of the opposition filed against it, the court on February 14, 1948, issued an order denying the motion for reconsideration and new trial, the dispositive part of the order being as follows:

"For all the foregoing considerations, this court is of the opinion and so holds that the herein defendants have failed to file their motion for a new trial within the period prescribed by law and the judgment of this court as a consequence has become final and executory as against them."

Notice of this order was received by the defendants in civil cases Nos. 4 and 24 on March 5, 1948. Because of this order, the plaintiffs under date of March 2, 1948, with

due notice to the defendants, filed a motion praying for the issuance of a writ of execution. Upon receipt on March 5, 1948, of said order the defendants merely objected to certain items of damages fixed in the said judgment, by raising new issues of fact and by asking the elimination of said items of damages which could no longer be set aside nor modified because the aforesaid judgment had already become final.

On March 8, 1948, the clerk of the Court of First Instance of Surigao issued a writ of execution directing the respondent sheriff of Surigao to deliver to the plaintiffs in the said civil cases Nos. 4 and 24, with due notice to both plaintiffs and defendants, the herein petitioners, the properties involved therein, respectively, but neither the defendants nor any person in their behalf sought in the Court of First Instance of Surigao, or petitioned the Judge thereof, to set aside the order of February 14, 1948, nor the writ of execution dated March 8, 1948; on the contrary said defendants simply limited themselves to asking for a period of time which was granted within which to fix their things and vacate the premises, and during said period defendant Elisa T. Carlota, despite the advise given her by the provincial sheriff of Surigao not to remove any of the improvements of the house under tax declaration No. 24386, vacated the premises and removed therefrom certain improvements that had been covered by the decision. The order of execution issued in said two civil cases Nos. 4 and 24 was complied by the provincial sheriff who delivered the properties in question to the plaintiffs.

The Case.—After the provincial sheriff of Surigao had duly complied with said order of execution, on March 16, 1948, Lupo D. Carlota and Elisa T. Carlota filed before this Court of Appeals a petition for a writ of certiorari and mandamus against the respondents, the Hon. Froilán Bayona and Florencio Cervantes, Judge of the Court of First Instance and provincial sheriff of Surigao respectively. At the instance of the petitioners, who posted a bond in the sum of ₱1,000 fixed by this Court, a writ of preliminary injunction was issued ordering the respondents

"to refrain from executing the decision of the respondent Judge, Hon. Froilán Bayona, dated September 8, 1947, in civil cases Nos. 4 and 24 of the Court of First Instance of Surigao, as well as such similar orders as may be issued previous and/or subsequent thereto until further orders of this Court. You are also hereby ordered to answer the petition within ten days from notice hereof."

The purpose of the present proceedings is to secure judgment from this Court of Appeals declaring "that the order of the respondent judge, dated February 14, 1947 was null and void and set aside, and that he be ordered to act upon the motion for reconsideration and new trial filed by the petitioners (the defendants therein) on November

10, 1947, and to decide the same on its merits." It shall be noticed that the plaintiffs in said cases Nos. 4 and 24 of the Court of First Instance of Surigao have not been joined as parties to these proceedings.

The respondents judge and sheriff have already filed their answers wherein they contend that no writ of certiorari and mandamus lies in this case:

"*Firstly*, because the petition does not comply with the provisions of Rule 67, section 5, of the Rules of Court which provides that "when the petition filed (in proceedings of certiorari and mandamus) relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings;

"*Secondly*, because in rendering the decision of September 8, 1947, as well as the order of February 8, 1947, denying the motion for reconsideration and new trial, the court had acted with jurisdiction over both the persons of the parties and the *res litigiosa;* and

"*Thirdly*, because in truth and in fact, and pursuant to sections 7 and 8 of Rule 27 of the Rules of Court, the judgment of the court *a quo* rendered in said civil cases Nos. 4 and 24, was already final and executory when the motion for reconsideration and new trial filed on November 10, 1947, was presented by the defendant spouses (the herein petitioners)."

The case was then called for hearing before this Third Division of the Court of Appeals, and submitted for decision without any evidence being presented in support of the averments of the petition and the answer, which, however, were verified by the oath of the respective parties or their counsel filing the same.

The Issues.—Considering the points raised by the pleadings, the questions at issue may be reduced to the following propositions to wit:

"I. Was the motion for reconsideration and new hearing *filed* on November 10, 1947, by the then defendants and herein petitioners out of time, or when the decision rendered in said civil cases Nos. 4 and 24 by the lower court under date of September 8, 1947, had already become final and executory?

"II. Has the respondent judge "acted without or in excess of his jurisdiction, or with grave abuse of discretion, or unlawfully neglected the performance of an act which the law specifically enjoined as a duty resulting from his office, or unlawfully excluded the petitioners from the enjoyment of a right to which they were entitled" when said respondent judge rendered in said civil cases Nos. 4 and 24, his decision of September 8, 1947, and the order denying the motion for reconsideration and new trial dated February 14, 1948?; and

"III. Has this Court of Appeals jurisdiction and power to annul, alter or modify the order of the lower court dated February 14, 1948, denying defendants' motion for reconsideration and new trial, when by so doing this Court may affect and injure the rights of the plaintiffs in said civil cases Nos. 4 and 24, who have not been made parties to these proceedings and thus deprived of their chance to protect their interests herein?"

Discussion of the controversy.—I. As stated in the narration of the antecedents of this case, notice of the decision of September 8, 1947, was sent on September 29, 1947, to the defendant spouses by registered mail. Registered envelope No. 2897 (which contained the copy of the decision in question) was posted at Surigao, Surigao, on September 29, 1947, the name of the addressee being Atty. José M. Vázquez, Surigao, Surigao. The *notice* of this registered envelope was prepared on that date (September 29, 1947) and *delivered* on *September 30, 1947*, to the addressee through his wife at their residence (Exhibit A). According to another certificate of the same postmaster of Surigao, dated March 23, 1948 (Annex A of the petitioners), said *registered letter* No. 2897 was *actually taken by and delivered to* the addressee, through his agent, on *October 10, 1947*.

Sections 7 and 8 of Rule 27 of the Rules of Court provide:

"SEC. 7. *Service of final orders or judgments.*—Final orders or judgments shall be served either personally or by registered mail.

"SEC. 8. *Completeness of service.*—Personal service is complete upon actual delivery. Service by mail is complete upon the expiration of five days after mailing, unless the court otherwise provides. *Service by registered mail* is complete upon actual receipt by the addressee; *but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.*"

Applying the provisions of the preceding sections to the case at bar, we have that according to the Rules of Court, *service* of the decision of the respondent judge in said civil cases Nos. 4 and 24 was *complete* on the defendants on *October 5, 1947*, that is, five days after the issuance of the *first notice* of the postmaster delivered on September 30, 1947.

Now, Section 3, Rule 41, of the Rules of Court, provides:

"SEC. 3. *New appeal is taken.*—Appeal from the Court of First Instance to the Court of Appeals may be taken by serving upon the adverse parties and filing with the trial court within *thirty days from notice of order or judgment* a notice of appeal, an appeal bond and a record on appeal. The time during which a motion to set aside has been pending shall be deducted."

By virtue of this provision the defeated defendants in civil cases Nos. 4 and 24 (the herein petitioners), had thirty days—from October 6, up to November 4 (Tuesday), 1947, (both dates inclusive)—within which to file either a motion for reconsideration and new trial or a notice to appeal, an appeal bond and the record on appeal. It is an undisputed fact that in the case at bar the defendants' only action to set aside the judgment rendered against them in said cases, was their motion for new trial and reconsideration *filed on November 10, 9147*. Therefore, said motion must be considered filed too late and when the decision of the respondent judge had already become

final and executory. Consequently, the order of the court of February 14, 1948, denying their motion for reconsideration and new trial on that ground, was in accordance with the facts of the case and the law on the subject.

II. By the present action, the petitioners seek to secure from this Court of Appeals a writ of certiorari and mandamus, which remedies are only available

"When any tribunal, board, or officer exercising judicial functions has acted without or in excess of his or its jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy or adequate remedy in the ordinary course of law * * *." (Section 1, Rule 67, Rules of Court.)

or

"When any tribunal * * * unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoinment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law." (Section 3, Rule 67, Rules of Court.)

There can be no denial of the fact that the respondent judge had acquired jurisdiction both over the persons of the parties and the *res litigiosa* when he rendered said decision of September 8, 1947. In view of the considerations made in the discussion of the first proposition, there is no question either that at the time of the filing by the defendants therein (the herein petitioners) of their motion for reconsideration and new trial, the decision of the respondent judge had already become final and executory. Consequently, we have no reason from which to infer that the respondent judge acted either without or in excess of his jurisdiction or with grave abuse of discretion, or that he unlawfully neglected the performance of an act which the law specifically enjoins as duty resulting from his office, or that he unlawfully excluded the defendants from the enjoyment of a right to which they are entitled. Hence we have to conclude that the remedies sought for by petitioners find no support in the law nor in the facts of the case.

III. Expressed as we have our opinion with regard to the two preceding questions at issue, it would seem unnecessary to dwell lengthily upon the third and last point of controversy. We may declare, however, that the purpose of Section 5, Rule 67, of the Rules of Court, which provides:

"SEC. 5. *Defendants and costs in certain cases.*—When the petition filed relates to the acts or omissions of a court or judge, *the petitioner shall join, as parties defendant with such* court or judge *the person or persons interested in sustaining the proceedings in the court;* and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings, and

costs awarded in such proceedings in favor of the petitioners shall be against the person or persons in interest only, and not against the court or judge."

is not only to impose upon the respondent private parties the burden of bearing the expenses of the proceedings, in case the petitioner is entitled to the remedy prayed for by him, but mainly to give such private parties an opportunity to defend the order or judgement of the lower court rendered in their favor. Such being the case it would be unfair and unjust in this and similar cases to dispense compliance with the specific provisions prescribing the joinder, as parties defendant, of the person or persons interested in sustaining the actuations of the respondent judge, and thus deprive them of their day in court.

In the case of Black *vs.* Brinkley, 54 Ark. 372, 374, it was held:

"The order of annexation which the appellant seeks to quash upon certiorari was made by the county court upon the petition of the owners of the annexed territory. They were parties in interest and parties to the record which the appellant sought to annul. There could be no legal determination therefore of their right to annexation without making them parties to the proceedings, or at least without making the person a party whom they had selected, in accordance with the statute governing such cases, to prosecute the petition of annexation in their behalf. As none of the petitioners nor the agent was a party to the proceedings for certiorari, the court did not err in refusing the order of annexation."

In the case of Soledad Peña de Luz, petitioners, *vs.* The Court of First Instance of Leyte, respondent, 43 Off. Gaz. No. 10, pages 4102–4104, October, 1947, the Supreme Court also held the following:

"This case has been submitted for decision upon the above facts gathered from the allegations and exhibits of petitioner and Judge Mariano Melendres of the Court of First Instance of Leyte; *but we are not in a position to render decision in view of the petitioners' non-compliance* with the provisions of Section 5 of Rule 67 of the Rules of Court.

* * * * * * *

"Although the omission has not been questioned by respondent lower court and Judge Melendres, in alleging in his answer that plaintiff Simeón D. Luz cannot be located and his former attorney has no interest in the case, appears to have waived his right to question the petition for noncompliance with Section 5 of Rule 67, *as the decision may adversely affect said plaintiff, it is in the interest of justice that he be given an opportunity to be heard in this case.*

"The Court, therefore, resolved that in accordance with section 6 of Rule 67 and section 16 of Rule 7, plaintiff Simeón D. Luz be declared as party respondent. He may answer the petition within ten (10) days from notice of this resolution."

In the case at bar, unlike in the case of Judge Melendres, the respondent Judge Bayona avers in his answer (par. V) "that the petitioners failed to comply with the

prescriptions of Rule 67, section 5, which, among other things, provides that when the petition filed relates to acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court; etc."

It cannot be said, therefore, that the respondent Judge Bayona has waived in this case any right which section 5, Rule 67, of the Rules of Court gives him and the plaintiffs in said civil cases, but in view of the conclusion we have arrived at in the preceding questions at issue, we deem it unnecessary to summon the plaintiffs in said civil cases Nos. 4 and 24 to give them an opportunity to be heard and defend their rights in these preceedings.

Wherefore, the petition for the issuance of a writ of certiorari and mandamus in the present case is denied, and this case dismissed with costs against petitioners. The writ of preliminary injunction issued by this Court of Appeals under date of March 16, 1948, is hereby dissolved. So it is ordered.

Torres, Pres. J., and *Endencia, J*, concur.

Petition denied.

[No. 1872-R. August 31, 1948]

JULIAN SALGADO, plaintiff and appellee, *vs.* LEOCADIA LOPEÑA and ESTEBAN ALABASTRO, defendants and appellants.

LEASE; HOUSE RENTAL LAW; RIGHT OF TENANT TO SELECT HIS PLACE OF ABODE SUBSERVIENT TO THE GENERAL WELFARE.—While it may be admitted that a person has the right to choose the place for his abode and his business, and that no other than he could judge his needs and wants, be it for his health, happiness, desire or whims, yet it should also be conceded that private individuals must give way to the policy of the State behind the promulgation of the emergency laws on rentals which are intended for the general welfare of the community to which they belong.

APPEAL from a judgment of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Agcaoili & Agcaoili for appellants.

Koh & Koh for appellee.

PAREDES, *J.:*

This appeal was taken to obtain a reversal of the judgment rendered by the Court of First Instance of Manila, ordering the appellants Leocadia Lopeña and Esteban Alabastro to vacate the residential lots Nos. 42 and 43, located in the interior of No. 721 Soler Street, Manila, leased to them by the appellee Julian Salgado.

The appellee contends that sometime after the liberation, the appellants and other tenants were allowed to construct temporary buildings on the burned area in the vicinity of the Arranque Market, Santa Cruz, Manila, belonging to him; that the appellants constructed a sort of a *barong-barong,* on condition to remove it should the appellee need the lots; and that such agreement, verbally entered into, did not stipulate any term for the payment of rentals. The appellants, on the other hand, allege that they had been the lessees of these lots continuously for a period of 30 years since 1918; that they had paid the rents thereof; that the appellants constructed a dwelling at a cost of ₱10,000; that although there are a dozen other tenants occupying residential lots contiguous to the ones in question, the appellee had chosen to eject the appellants; that after losing another case had between the appellants, as plaintiffs, and the appellee and a certain Chinaman, as defendants, filed in the municipal court of Manila, appellee filed the present case against the appellants, simultaneously with a criminal case lodged with the City Fiscal's office for estafa against them; and that aside from these residential lots, appellee owns another property located on Ongpin Street, just a few meters away from them.

There being no allegation that the appellants subleased the property without the consent of the appellee, or that they willfully and deliberately failed to pay the corresponding rents, as in fact, and as found by the trial court, payments of rentals were made as they were raised, from time to time, by the appellee, the only question to be determined now is whether or not the appellee needed these residential lots for himself. (Sec. 2, C. A. No. 689, as amended by R. A. No. 66; Santos *vs.* Alvarez et als., G. R. No. L–332.) If the object of the appellee in ejecting the appellants from the premises, as stated by him, was to erect his residence and office there, as the strain of trips from his actual residence at Santa Ana would be deleterious to his health, then it would seem clear that the place is not adequate for him, because, aside from the fact that the space is small, borders the annoyingly noisy and foul-smelling market place of Dulumbayan (Arranque) and sandwiched by other dozen contiguous lots interiorly located, the appellee has, not far from the premises in question, also another property rendered vacant by fire, where he had his residence for 40 years before the outbreak of the war, and where he could construct his alleged new residence and office, without taking the trouble of filing the ejectment case or unnecessarily molesting his tenants. If one of the purposes of ejecting the apellants was to cooperate with the City in eliminating obstructions in the said market place, the corresponding city authorities at his own behest could have helped him, upon ap-

pellant's refusal to do so. Evidently, when the appellee had chosen to eject the appellants out of a dozen or more tenants occupying contiguous lots to the premises in question, he had an axe to grind. It has been shown that, before the filing of the present suit, the appellants as lessees, had won a case in the Municipal Court against Jose Cua, as sublessee, and the herein appellee (case No. 2315), and that the appellee had also filed a criminal complaint against the appellants in the City Fiscal's Office of Manila, for usurpation of property rights, according to the appellee, or for estafa, according to the appellants, which was dismissed.

While it may be admitted that a person has the right to choose the place for his abode and his business, and that no other than he could judge his needs and wants, be it for his health, happiness, desire or whims, yet it should also be conceded that private individuals must give way to the policy of the State behind the promulgation of the emergency laws on rentals which are intended for the general welfare of the community to which they belong.

The conclusion reached would, therefore, relieve us from the task of deciding whether or not the provisions of the Civil Code are applicable, because the ground for ejecting the appellants was predicated, not upon the termination of the contract of lease or failure to pay the rentals, but upon the alleged necessity of the owner to use the premises for himself. Moreover, no convincing proof was adduced by the appellee on the supposed verbal agreement entered into between the parties whereby the appellants were permitted to build a house on the premises, on condition that they should abandon the place as soon as they were notified. As claimed, it is reasonable to conclude that the appellants would not have erected a house which had cost them around ₱10,000, had they known they would have to be ejected upon a moment's notice.

With the reversal of the judgment appealed from, without costs, the Court also dismisses the counter-claim. It is so ordered.

Labrador and *Reyes, JJ.*, concur.

Judgment reversed; Court also dismissed the counter-claim.

[No. 1917-R. Agosto 31, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* TIRSO BASA Y SANTOS, acusado y apelante

1. DERECHO PENAL; POSESIÓN ILEGAL DE ARMA DE FUEGO Y MUNICIONES; "ANIMUS POSIDENDI."—Si R. instruyó a B. que recogiese la pistola y las municiones Exhíbits A y B y las presentara a la autoridad, como debía haber sido así la instrucción de

un funcionario público o agente del orden, el hecho de que él las llevaba a una agencia de armas de fuego revela que con ellas quería negociar, haciendo una transacción lucrativa. El propósito de lucro, en este caso, no se puede separar del ánimo de poseer, porque por algún derecho a dichas pistola y municiones, B. intentaba obtener precio o consideración.

2. ID.; ID.; PRUEBA DE "ANIMUS POSIDENDI," INNECESARIA.—No es necesario que en esta causa de posesión ilegal de arma de fuego y municiones se pruebe el ánimo de poseer, porque la infracción de ley por la cual se hace responsable al acusado es meramente *mala prohibita*, o un acto prohibido por la ley, en cuya infracción se incurre, aun sin intención maliciosa (U. S. *vs.* Go Chico, 14 Phil., 128; People *vs.* Bayona, 61 Phil., 1081; People *vs.* Genato, O. G. 5, 1940).

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, J.

The facts are stated in the opinion of the court.

B. A. Bayle for appellant.

Assistant Solicitor General Torres and *Solicitor Abad Santos* for appellee.

DE LA ROSA, *M.:*

Tirso Basa y Santos fué condenado por el Juzgado de Primera Instancia de esta ciudad de Manila por posesión ilegal de un arma de fuego y municiones a la pena indeterminada de dos (2) a cinco (5) años de prisión y a pagar las costas, fallo contra el cual apeló.

En la tarde del 14 de abril de 1947, mientras Tirso Basa se iba al Center Theater, establecido en Quezon Boulevard, de esta ciudad de Manila, un agente del Servicio Secreto se le acercó, le registró y encontró en el bolsillo izquierdo de su pantalon una pistola, calibre .45, y siete capsulas, por las cuales fué arrestado y llevado a la oficina de investigación secreta (Detective Bureau), por haber el mismo confesado que por ellas no tenía la licencia correspondiente para poseer.

La defensa interpuesta consiste en que el teniente Ricardo de los Reyes instruyó a Basa que fuera a recoger la pistola y las municiones Exhíbits A y B de una casa en Tayuman, donde estaban guardadas, pertenecientes a un amigo suyo llamado Ponsing Reyes, y en efecto recogió para presentarlas al Coronel Memije, que tenía su oficina en el Center Theater y era encargado de una agencia debidamente autorizada para comerciar en armas de fuego, quien le había dicho:

"5. That Colonel Memije, instructed the defendant-appellant, that if appellant could get loose firearms, he should present it to him (Colonel Memije) (t.s.n., p. 9), who will surrender it or if the Agency needs he (Colonel Memije) is going to buy it. (T.n.t., p. 11)." (Alegato del Apelante, pág. 3).

No se cuestiona esta apreciación del juzgado *a quo.*:

"Under Republic Act No. 4, section 2, in connection with Proclamation No. 1 of the President dated July 20, 1946, the explanation

given by the accused for his possession of the firearm and ammunitions in question does not constitute a valid defense. Under said proclamation the surrender of firearms is to be made to any officer of the Military Police Command of the Philippine Army or to the Secretary of the Interior or the Governor of the province or the Mayor of the place wherein the accused resides not later than August 31, 1946. Thus the possession of the pistol and ammunitions in question by the accused on April 14, 1947, is in open violation of Republic Act No. 4 and Proclamation No. 1 of the President." (Alegato del Apelante, págs. 17 y 18).

Pero se sostiene que no ha habido de parte del acusado ánimo de poseer la pistola y las municiones Exhíbits A y B, porque solamente las tuvo con el propósito precisamente de presentarlas a la autoridad.

Si el Teniente de los Reyes instruyó a Basa que recogiese la pistola y las municiones Exhibits A y B y las presentara a la autoridad, como debía haber sido asi la instrucción un funcionario público o agente del orden, el hecho de que él las llevaba a una agencia de armas de fuego revela que con ellas quería negociar, haciendo una transacción lucrativa. El propósito de lucro, en este caso, no se puede separar del ánimo de poseer, porque por algun derecho a dichas pistola y municiones el acusado intentaba obtener precio o consideración.

Además no es necesario que en esta causa se pruebe el ánimo de poseer, porque la infracción de ley por la cual se hace responsable a Basa, como con razón dice el Procurador General, es meramente *mala prohibita*, o un acto prohibido por la ley, en cuya infracción se incurre, aun sin intención maliciosa (U. S. *vs.* Go Chico, 14 Phil., 128; People *vs.* Bayona, 61 Phil., 181; People *vs.* Genato, Off. Gaz., 2720. October 5, 1940).

Se confirma en todas sus partes la sentencia de que se apela, con las costas al apelante. Así se ordena.

Jugo y *Gutierrez David, MM.* están conformes.

Se confirma la sentencia.

[No. 1319–R. September 6, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* RICARDO PADILLA, defendant and appellant

1. CRIMINAL LAW; EVASION OF SENTENCE; EXEMPTION FROM CRIMINAL LIABILITY FOR HAVING ACTED UNDER THE INFLUENCE OF UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY.—Accused in leaving the penal institution of Davao during a disorder or commotion caused by a mass evasion of prisoners and in following the numerous escaping prisoners, acted under the influence of uncontrollable fear of an equal or greater injury, which relieves him of criminal liability.
2. ID.; ID.; LOYALTY, ALLOWANCE FOR, IMPROPER IN CASE AT BAR.—Accused left prison not under the circumstances mentioned in article 158 of the Revised Penal Code. There was no disorder resulting from fire, earthquake, explosion or similar catastrophe. Nor was there mutiny or "amotinamiento" which implies an organized unlawful resistance to a superior officer;

a sedition; a revolt. Hence, he is not entitled to the allowance for loyalty which he claims.

APPEAL from a judgment of the Court of First Instance of Davao. Fernandez, J.

The facts are stated in the opinion of the court.

Engracio P. Llado for appellant.

Assistant Solicitor-General Torres and *Solicitor Makasiar* for appellee.

GUTIERREZ DAVID, *J.:*

Ricardo Padilla was found guilty of evasion of sentence by the Court of First Instance of Davao and was sentenced to suffer 4 years, 9 months and 11 days of *prisión correccional,* with the accessory penalties of the law and costs. This is his appeal.

By virtue of a final judgment in criminal case No. 103 of the Court of First Instance of Davao, whereby he was sentenced on June 19, 1946, to 4 months of *arresto mayor* for the crime of theft, appellant was committed to and confined in the provincial jail of Davao located at Davao City. With the appellant were 19 other convicted prisoners, 54 detained prisoners and 35 political detainees. The detained prisoners as well as the convicts, including the appellant, were confined in nine cells under lock. Owing to lack of space, the political detainees were placed in a cell without lock on the second floor. The provincial warden of Davao had the policy of assigning political detainees to assist in keeping vigil during the night in view of the insufficiency of provincial guards. From 6 p.m. of September 2nd to 6 p.m. of September 3rd, 1946, provincial guards Gaudencio Pimentel and Fernando Clavo were on detail, assisted by political detainees Menon Lopez, Sabas Baliwag and Jose Seroy. Early in the morning of September 3rd, about 2 o'clock, while Pimentel was on the desk inside the jail, he was suddenly approached and disarmed by Seroy and one of his companions, a political detainee, at the point of their rifles. Then the escapists turned off the lights. Clavo, who was guarding outside the jail, came to the rescue of Pimentel but was intercepted by the other companion of Seroy and was likewise disarmed. The leaders of the prison break forced open the doors of seven of the locked cells. Out of 109 prisoners, 61 were found missing, the three leaders aforementioned and the appellant herein being among the latter. Before their flight, the escapees cut the telephone communication.

Appellant's version is to the effect that he was sleeping at the time of the jail delivery and was awakened by the noise caused thereby. Upon waking up, he saw the door of his cell already open and the lights of the jail off. He noticed the silhouette of a man standing at the door holding something which appeared to him to be a firearm and

who was giving orders to the prisoners to leave the cell and threatening to shoot at whoever remained in the jail. Appellant was reluctant to obey the order to leave but had to follow the same because he and his companions were thus forced to do so. Once outside the jail, they were told to line up; and they made their get-away through the coconut groves. As they were marching away, appellant tried to sneak out but he could not do so because someone was guarding behind him. Upon reaching barrio Buhangin, however, he, together with one Chinese named Dy Too, was able to slip away from the escapists. The two forthwith sought the barrio lieutenant of Buhangin, who, upon their request, accompanied them in surrendering themselves to the police authorities in Davao City where they arrived about 4:00 p.m. of the same day. They were then and there turned over by the chief of police to the MPC headquarters.

In this appeal appellant contends that the trial court should have held that he was irressistibly forced to leave the jail and that instead of convicting him, the court should have given him special time allowance for loyalty pursuant to Article 158, in relation with article 98, of the Revised Penal Code, inasmuch as he left the penal institution during a mutiny and gave himself up to the authorities within 48 hours.

It appears that appellant left the penal institution during a disorder or commotion caused by a mass evasion of prisoners. The prison breakers ordered the prisoners to get out of jail and the latter were lined-up outside the jail before they marched away. Warden Pedro Guyot admits these facts (p. 23, t.s.n.). In addition to this, appellant testified, without contradiction, that while he was inside the cell he saw his companions going out hurriedly and heard somebody shouting that he would fire at anybody who remained in jail. Under the circumstances aforementioned, we believe that the appellant in leaving the jail and in following the numerous escaping prisoners, acted under the influence of uncontrollable fear of an equal or greater injury, which relieves him of criminal liability.

That appellant was not willing to evade his sentence can be gleaned from the fact that scarcely a month, more or less, remained for him to complete the term of his four-months sentence, and from the further fact that as soon as he had the chance to escape from the leaders of the jail delivery, he sneaked out and looked for the barrio lieutenant of the nearest barrio to ask for the latter's help so that he (appellant) could surrender himself to the police authorities. This was done just a few hours after the prison break. And there is no showing that appellant could not have made good his escape had he so desired.

Appellant left prison not under the circumstances mentioned in article 158 of the Revised Penal Code. There was no disorder resulting from fire, earthquake, explosion or similar catastrophe. Nor was there mutiny or "amotinamiento" which implies an organized unlawful resistance to a superior officer; a sedition; a revolt. Hence, appellant is not entitled to the allowance for loyalty which he claims.

Premises considered, the decision appealed from is hereby reversed, the defendant acquitted, and his immediate discharge from custody ordered, with costs *de oficio*.

Jugo and *De la Rosa, JJ.*, concur.

Judgment reversed; defendant acquitted.

[No. 2148-R. September 9, 1948]

INTESTATE ESTATE OF THE DECEASED JOSE MOMBLAN; PATRICIO L. RIGONAN, administrator and appellee, *vs.* MANUEL ESTIPONA, petitioner and appellant.

1. INTESTACY; INTESTATE PROCEEDINGS, PETITION FOR OPENING OF; FRAUDULENT SUPPRESSION OF NAMES OF KNOWN HEIRS, EFFECT; CASE AT BAR.—The rules require that the *names of the heirs* must be set forth in the petition for the opening of the intestate proceedings, and that such heirs should be notified by mail or personally of the petition and of the time set for its hearing (Rule 80, Sections 2 and 3, and Rule 77, Section 4, of the Rules of Court). While it is true that a defect in the petition does not invalidate the issuance of letters of administration in the case of a mere mistake (Rule 80, Section 2, Rules of Court), it can not be seriously claimed that the proceedings without the required notice to the heirs—a deficiency impelled by the fraudulent suppression of their existence—are valid and binding on them, the proceedings, in fact and effect, being a deprivation of said heirs of their day in court, ultimately resulting in the taking away of their property or property rights without due process of law. Since in the present case, the names of known heirs have been fraudulently suppressed, as a result of which they have been unable to be heard in the proceedings, and especially with respect to claims against the estate of the deceased, such proceedings are null and void as violative of the due process clause in our Constitution. (*See:* Banco Español-Filipino *vs.* Palanca, 37 Phil., 921, 937.)

2. ID.; ID.; COURTS; PROBATE AND APPELLATE COURT, THEIR POWER TO ANNUL ORDERS TAINTED WITH FRAUD.—Probate courts, and this court on appeal, are clothed with full power to annul orders tainted with fraud in the slightest degree (Dariano *vs.* Fidalgo, 14 Phil., 62; 42 C. J., 546–547), the principle being that a transaction originally founded on fraud is all the time tainted with said vice however long the negotiations may continue, or into whatever ramifications it may extend (In re Estate of Reyes, 17 Phil., 188, 204). If there is no remedy by which orders so tainted can be impeached and annulled, courts of justice may be made instruments by which the grossest fraud may be successfully accomplished. It is a well established principle of jurisprudence that courts have

power, on proceedings had, to set aside or vacate their judgments and decrees whenever it appears that an innocent party without notice has been aggrieved by a decree obtained without his knowledge by fraud of the other party (Edson *vs.* Edson, 108 Mass. 590, 11 Am. Rep., 393).

APPEAL from an order of the Court of First Instance of Sorsogon. Amador, J.

The facts are stated in the opinion of the court.

Manuel Estipona for appellant.
Patricio L. Rigonan for appellee.

LABRADOR, *J.:*

This is an appeal from an order dated November 6, 1941, of the Court of First Instance of Sorsogon, reducing the claim of the appellant in the amount of ₱1,016.66, thus setting aside and modifying a previous order dated September 2, 1941, which had approved the claim as presented, in the amount of ₱2,350.

This special proceeding was instituted on the petition of the appellant Manuel Estipona as creditor of the intestate Jose Momblan. The notice of the hearing was made by publication, and after the hearing the court on July 15, 1941, on recommendation of the appellant, appointed Patricio Rigonan administrator of the intestate (Record an Appeal, p. 5). On August 11, 1941, the appellant herein presented a claim for ₱2,000 for alleged services rendered as attorney for the deceased in civil case No. 2338 of the Court of First Instance of Sorsogon, and for an additional amount of ₱350, representing expenses advanced by claimant in said case (Record on Appeal, pp. 6–9). On August 12th the administrator recommended that said claim be allowed in its entirety, and that it should be declared as a preferred claim and a lien on the intestate of the deceased (Record on Appeal, pp. 10–12). On September 2, 1941, the court approved the claim in full (Record on Appeal, pp. 12–13). In the order approving the claim, the administrator was ordered to inquire if there are heirs, legatees, or other persons who might have an interest or right in the properties left by the deceased, and on September 18, 1941, the administrator filed a report that "of his own personal knowledge and belief the deceased Jose Momblan had no known heirs, devisees, legatees, or any other persons who would be affected in this intestate estate *in the Philippines.*" (Record on Appeal, p. 14; Underscoring ours.) On September 25, 1941, the appellant herein, with other claimants whose claims had also been approved, filed a joint petition for the payment of their claims, and the court *a quo,* on the basis of this petition, entered the order appealed from. The order states that since the claimant and appellant had appeared in civil case No. 2338, not only on behalf of the

intestate Jose Momblan, but also on that of his sisters Julia and Laura Momblan, and of the further fact that appellant had tried to secure the payment of the amount of ₱2,000 as attorney's fees in said civil case, but which attempt was denied by the court, the claim should be reduced from ₱2,000 to ₱666.60 or one-third of the ₱2,000 claimed.

The claim states that it is accompanied by various exhibits marked A to H, but only Exhibit A is attached to the record. The administrator received a copy of the claim on August 5, 1941, and his answer thereto recommending approval of the claim bears date of August 6, 1941, the day following his receipt of appellant's claim. The order appealed from expressly cites Exhibits A and G. Appellant received copy of the order appealed from on November 6, 1941, and on November 25th he presented a petition for partial reconsideration. The motion for reconsideration was heard, but the court on June 10, 1943, instead of setting aside its order (now appealed from), further reduced the amount approved from ₱1,016.66 to ₱1,000. In view of this, appellant presented a motion for new trial. At the hearing of this motion on June 26, 1943, appellant submitted additional documentary evidence marked Exhibit 1–Estipona, Exhibit 2–Estipona, Exhibit 3–Estipona, and Exhibit 4–Estipona. The original motion presented as Exhibit A was also presented as Exhibit 5–Estipona. The court also denied this motion, hence this appeal.

The main argument presented on this appeal is the alleged invalidity of the order of the court dated November 6, 1941, modifying its previous order of September 2, 1941, which had already become final. Another issue of less importance is that raised in the second assignment of error to the effect that the trial court erred in making the reduction in the claim from ₱2,000 to ₱666.66. The other errors assigned are a consequence of these two supposed errors.

It appears clear to us that as the trial court approved the appellant's claim in its order dated September 2, 1941, this order became final and could not be changed, modified, or revoked by the order promulgated less than sixty days thereafter, *i.e.*, November 6, 1941, unless the period of thirty days within which the order becomes final may be deemed interrupted by appellant's own petition dated September 25, 1941 (filed within twenty-three days after the order), for the payment of the claim already approved, or unless the court was justified in setting it aside for valid reasons. The question as to whether or not the presentation of the petition dated September 25, 1941, for the payment of the claim already approved had the effect of suspending the period within which the order of Sep-

tember 2, 1941, may become final, we do not here decide, as it is unnecessary for us to do, and we prefer to decide the appeal on more fundamental issues.

The petition to declare the order of November 6, 1941 as null and void operates to reopen the whole record for a review of the proceedings anterior to the order of September 2, 1941, for the purpose of determining whether this revoked or amended order is not itself null and void. No use or advantage can be acquired by a declaration that the order appealed from (that of November 6, 1941) is null and void, if the previous order which it modifies or revokes, and which is sought to be enforced, is in itself also null and void because of the nullity of the proceedings leading to its issuance.

The original petition filed by the appellant fails to state that the intestate Jose Momblan had two sisters in Spain, notwithstanding the fact that the petitioner, appellant herein, knew of the existence of such sisters, because he was in possession of a power of attorney executed by the said sisters in favor of his client Jose Momblan (Exhibit 4–Estipona). This document shows that Julia Momblan and Laura Escudero Momblan, together with the intestate Jose Momblan, are heirs of the deceased Francisco Momblan, from which fact we deduce that they must have been related among themselves. The trial court found that the two, Julia and Laura Momblan, are sisters of the intestate Jose Momblan, and this fact is admitted by the appellant himself in his motion for partial reconsideration, in which motion he alleges that they are sisters of the intestate (Record on Appeal, p. 19). When the appellant filed the claim of his client, the intestate Jose Momblan, in civil case No. 2338, he was aware of the existence of the said two sisters of the intestate. As a matter of fact, he had been their attorney, the intestate having contracted his services to represent himself and his sisters. It is, therefore, patent that the appellant, in his petition for the opening of the intestate proceedings, suppressed the fact that the intestate Jose Momblan had sisters in Spain, and that he knowingly withheld said fact, in violation of the requirements of section 2 of Rule 80 of the Rules of Court, requiring statement of "(*b*) the names, ages, and residences of the heirs, * * *," of the decedent. The omission of the existence of known heirs can not be said to be unintentional; it was a fact well known to the appellant as petitioner, because appellant had represented them. The petition states that there are no known heirs of the intestate in the Philippines, but what the law requires is that the heirs be named, wherever they may be found. This is clear, as heirs have a right to the estate, whether residents of the Philippines or not, and have a right to be notified of the proceedings. Whatever reasons may have

impelled appellant to supress the existence of heirs abroad, we are inclined to believe that the omission must have been willful, and that it must have been dictated by the desire of the appellant to rush the collection of his claim, his haste being apparent from the short time within which the consent of the administrator was secured.

We note from the power of attorney that the appellant had in his possession Exhibit 4—Estipona, that he was to receive only *a contingent fee* for the services he was to render in civil case No. 2338, as paragraph 7 of the power of attorney contains this specific provision:

"Que por los otros servicios que la segunda parte tiene prestados y prestara en relación con la anulación de la venta que ha sido ya aprobado por el Juzgado como también con la remoción o cambio del administrador actual, * * *, la primera parte se obliga y esta obligada a pagar por tales servicios de la segunda parte una suma justa y razonable conforme la naturaleza y circunstancias del caso permitida por la ley, *siendo tal compensación de caracter contingente, esto es, que la primera parte estara obligada a pagaria, tan solo en el caso de obtenerse en el asunto algún resultado favorable.*"

It can also be stated, in addition, that the appellant has not shown that the services rendered by him in said case had been favorable in its results to his client. It is apparent, therefore, that the sisters of the intestate in Spain had a legal and valid defense to the appellant's claim in this action, and were entitled to be heard, a valuable and precious right.

In so far as the willful suppression by the appellant of the fact that the intestate had sisters in Spain, it is to be noted that the rules require that the *names of the heirs* must be set forth in the petition, and that such heirs should be notify by mail or personally of the petition and of the time set for its hearing (Rule 80, sections 2 and 3, and Rule 77, section 4, of the Rules of Court). While it is true that a defect in the petition does not invalidate the issuance of letters of administration in the case of a mere mistake (Rule 80, section 2, Rules of Court), it can not be seriously claimed that the proceedings without the required notice to the heirs—a deficiency impelled by the fraudulent suppression of their existence—are valid and binding on them, the proceedings, in fact and effect, being a deprivation of said heirs of their day in court, ultimately resulting in the taking away of their property or property rights wthout due process of law. Our Supreme Court, in the case of Banco Español-Filipino *vs.* Palanca, 37 Phil., 921, 937, distinguishes between lack of jurisdiction and violation of the requirement of due process of law. We hold that in the present case, where the names of known heirs have been fraudulently suppressed, as a result of which they have been unable to be heard in the proceedings, and especially with respect to claims against

the estate of the deceased, such proceedings are null and void as violative of the due process clause in our Constitution.

Appellant cites some American cases in support of his claim that the silence in the petition about the names of known heirs does not deprive the court of its jurisdiction. We have no quarrel with him in this respect, that the court retains jurisdiction (of the proceedings), which depends upon the residence of the intestate at the time of his death (Moran's Commentaries on the Rules of Court, Volume II, p. 292). But while such may be true, it does not necessarily follow that the proceedings from the time of its inception to the issuance of the order approving the claim of the appellant are to be considered valid. Said proceedings suffer from a fatal defect, namely, that they were rushed through the court by means of fraud, resulting in the deprivation of the parties interested in the estate of their opportunity to be heard, both with respect to the appointment of the administrator, as well as to the claim in question. Probate courts, and this court on appeal, are clothed with full power to annul orders tainted with fraud in the slightest degree (Duriano *vs.* Fidalgo, 14 Phil., 62; 42 C. J., 546–547), the principle being that a transaction originally founded on fraud is all the time tainted with said vice however long the negotiations may continue, or into whatever ramifications it may extend (In re Estate of Reyes, 17 Phil., 188, 204). If there is no remedy by which orders so tainted can be impeached and annulled, courts of justice may be made instruments by which the grossest fraud may be successfully accomplished. It is a well established principle of jurisprudence that courts have power, on proceedings had, to set aside or vacate their judgments and decrees whenever it appears that an innocent party without notice has been aggrieved by a decree obtained without his knowledge by fraud of the other party (Edson *vs.* Edson, 198 Mass. 590, 11 Am. Rep. 393).

For the foregoing considerations, the proceedings had in the above-entitled case, including the issuance of letters of administration, should be, as they hereby are, annulled, and it is hereby ordered that the petitioner and appellant be required to amend his petition for the appointment of an administrator, after which the procedure prescribed in the rules following the presentation of the petition will be observed, or more specifically, that the known heirs of the intestate, whose names will appear in the amended petition, be notified by registered mail of said petition and of the order of the court setting it for hearing.

We are of the opinion that the petitioner and appellant in this case, who is a lawyer, has not faithfully complied with his duties as a lawyer and as an officer of the court,

and while it would not be out of place for us to subject him to a disciplinary measure. we believe that the disappointments he has received in these and other proceedings should be sufficient discipline for him, especially as he is to bear his own expenses and pay his own costs in these proceedings. So ordered.

Jose B. L. Reyes and *Jose Ma. Paredes, JJ.*, concur.

[No. 2466-R. Septiembre 9, 1948]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* RAFAEL MONTEVEROS, MAURO FAILAGO y CONRADO TEJADO, acusados y apelantes.

1. DERECHO PENAL; ROBO; MERA PRESENCIA EN EL ACTO DURANTE EL ROBO (O HURTO) COMETIDO POR OTROS, EFECTO; CASO DE AUTOS.—El record no suministra pruebas de que los acusados Monteveros y Failago se confabularon con Acay y Panike no solo para detener a Tan Sik sino para robarle también. No se sabe si dichos acusados (Monteveros y Failago) obtuvieron alguna participación en las alhajas y dinero de que se apoderaron Acay y Panike. Su presencia durante el registro, es la única circunstancia para ellos adversa, pero que dista de ser demostrativa, mucho menos concluyente, de culpabilidad fuera de duda razonable, por el delito de robo enjuiciado. Por tanto, se sobresee la causa contra ellos por robo.
2. ID.; DELITO COMPLEJO; DETENCIÓN ILEGAL LEVE CON LESIONES MENOS GRAVES; CASO DE AUTOS.—La responsabilidad de los acusados Monteveros y Tejado, como autores del delito complejo de detención ilegal leve con lesiones menos graves, esta plenamente probada. Monteveros y Tejado con Acay y Panike, forzaron la entrada e irrumpieron en la casa de Tan Sik en la noche del 30 de abril; sujetaron a este y, al negarse a ir con ellos, le golpearon, Monteveros con su arma de fuego; le arrastraron fuera de la casa, le embarcaron en un jeep, le metieron en una bodega oscura de la Guihing Plantation, le hicieron comparecer ante su jefe Orbe, le volvieron a golpear, hicieronle firmar el affidávit Exhíbit A, contra su voluntad y a la fuerza; le embarcaron otra vez en el jeep, para llamar a Luy Chan, su principal, por medio de él, que se frustró por no haber este abierto la puerta y por hallarse en el lugar el sereno Alejandro Caballero de la tienda; y por último, hacia las 2:00 de la madrugada del día siguiente, le devolvieron a su casa molido a golpes. Estos hechos constituyen el delito complejo de detención ilegal leve con lesiones menos graves del cual los referidos acusados M. y T. son responsables.
3. ID.; CIRCUNSTANCIAS AGRAVANTES DE NOCTURNIDAD Y ABUSO DE SUPERIORIDAD, NO APRECIABLES; DE MORADA Y ROMPIMIENTO DE PUERTA, CONCURRENTES; CASO DE AUTOS.—La forma en que se hizo la detención ilegal de Tan Sik, lo mismo pudo haberse hecho de día, pero la verificaron de noche porque las informaciones de que se vendían copra a los Chinos se recibieron por la tarde. No es, por lo tanto, de creer que se han valido de la oscuridad para detenerle. Tampoco es de apreciar el abuso de superioridad, por la sencilla razón de que si la autoridad constituida necesita revestirse de fuerza para detener, con razón, los que no son funcionarios o agentes de la ley, tienen que valerse de la fuerza para detener. Las circuns-

tancias, por lo tanto, de morada y rompimiento de puerta, son las únicas agravantes de apreciar en este caso.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Dávao. Fernández, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sr. Abelardo Aportadera en representación del apelante.
El Procurador General Auxiliar Sr. Barcelona y *Procurador Makasiar* en representación del apelado.

DE LA ROSA, *M.:*

Rafael Monteveros, Mauro Failago y Conrado Tejado fueron hallados culpables por el Juzgado de Primera Instancia de la Provincia de Dávao, 26.° Distrito Judicial, del delito complejo de robo con detención ilegal leve, y les sentenció a la pena indeterminada de ocho (8) años y un (1) día a dieciocho (18) años, dos (2) meses y veinte (20) días de reclusión temporal, con las accesorias prescritas por la ley, a indemnizar mancomunada y solidariamente al ofendido Tan Sik en la suma total de ₱210 y a pagar proporcionalmente las costas, fallo contra el cual apelaron.

En 30 de abril de 1947, informado José Orbe, gerente de la Guihing Plantation, radicada en el municipio de Santa Cruz, de la Provincia de Dávao, de que algunos de sus aparceros vendían copra a los chinos, entre 7:00 y 8:00 de la noche comisionó a Gervasio Acay, detective empleado en la plantación, para que trajera ante él al chino Tan Sik. Acay llevó consigo varios compañeros, tres de ellos armados de *sub machine-gun* y *carbines*. Se dirigieron, embarcados en un jeep guiado por Serafin Tolosa, a la casa de Tan Sik, ubicada en el barrio de Limonso, de la misma jurisdicción de Santa Cruz, a cuatro kilometros de Guihing. Tocaron en la puerta—sus moradores ya se habían recogido—y como no les atendiesen, abrieronla a golpes, rompiendo la barra de madera que la cerraba por dentro. Irrumpieron cuatro de ellos en el interior, dos agarraron a Tan Sik de las manos, uno le apuntó con su arma de fuego en el estómago y otro registró la casa. Tan Sik conoció a Acay y Monteveros, porque éste era el que le apuntaba con su arma de fuego, y al hablar del individuo que practicó el registro, dijo que era un hombre robusto. La vieja We Aw, madre de Tan Sik, que vivía con éste, estaba con él en esa noche y presenció la ocurrencia, preguntada por los que en su casa entraron, identificó:

"A. This one, witness pointing to accused Rafael Monteveros, as the one pointing the gun; this one, witness pointing to accused Conrado Tejado; and one husky fellow who is not here. Also one more who went out. He was sitting here in this stand. Witness referring to Gervacio Acay, one of the witnesses of the prosecution.

"Q. Did you recognize the person who was searching your trunk?—
"A. The one who was sitting here. Witness refers to Gervacio Acay." (T.n.t. p. 73)

Terminado el registro, por negarse Tan Sik a seguirles a Guihing, le dieron de puñetazos, Monteveros le golpeó con su fusíl, en calzoncillos y camiseta le llevaron a rastras al jeep y en él le embarcaron. Al llegar a Guihing, le metieron en la bodega oscura de la plantación, le dieron otra vez de puñetazos, centrando los golpes en su estómago, y llevaronle después a la oficina de Orbe, donde éste estaba sentado a una mesa, con unos cinco compañeros, y en ella hicieron firmar a Tan Sik el affidávit, Exhíbit A, donde éste dice que el chino Uy Leon-ñga, que vive en Toril, compraba copra de algunos aparceros de la Guihing Plantation. Otorgado este affidávit, Acay y compañeros le volvieron a embarcar en el jeep y le llevaron a la tienda del chino Luy Chan, situada en el mismo barrio de Limonso, donde Tan Sik era dependiente. No habiendo conseguido que Luy Chan les abriera la puerta, se marcharon, y hacía las 2:00 de la madrugada le devolvieron a Tan Sik a su casa, desde cuyo solar, su madre que le aguardaba, le ayudó a subir y entrar, porque estaba exhausto, por los golpes que le propinaran sus aprehensores. Hacia el amanecer, mientras We Aw y Tan Sik devolvían a sus sitios las cosas que se habían desparramado con motivo del registro, notaron que de entre los objetos que tinían en su baúl habían desaparecido el *alien certificate* de Tan Sik, un anillo y un par de pendientes de oro de We Aw, y del bolsillo de un pantalón de aquél ya no estaba la cantidad de ₱120. El anillo y el par de pendientes valían ₱40. Perdieron, por lo tanto, en total la suma de ₱160. El primero de mayo, madre e hijo se fueron a la población de Dávao para dar parte del suceso al fiscal, y al día siguiente Tan Sik entró en el Davao Public Hospital, y alli según el Dr. Babao,

"A. He was confined in the hospital from May 2 to May 8, 1947, and after that he was treated as an outside patient from May 9 to 14, 1947." (T.n.t. p. 34).

de las lesiones que constan en el certificado médico Exhíbit B, a saber:

"(1) Contusion moderately, Severe Right, Hypochondrium.
"(2) Pleuritis, Right Base, Medial and anterior side."

Sobre los ₱120 que habían desaparecido del bolsillo de su pantalón, Tan Sik, aseveró:

"Q. Please state how you were able to find out that you lost the ₱120 that was placed inside your trousers?—"A. That night it was the husky fellow who took the money from my trousers." (T.n.t. p. 5.)

En la vista, el hombre robusto, que según We Aw y Tan Sik era uno de los cuatro que irrumpieron en su casa en la noche autos, fué identificado por Acay como uno de sus

compañeros entonces, llamado Quirico Panike, que se escapó y no ha sido aun arrestado; y de acuerdo con Orbe:

"Q. What did you do later on to Tan Sik?—"A. Some days afterwords I was told that he was staying in the hospital because he was boxed by one man.

"Q. Who is that man?—"A. Querico Panike, one of my men. Then I begin to investigate but this man has already gone to Iloilo, I dispatched some days ago, when I learn of the incident." (T.n.t. pp. 108–109)

Acay no fué enjuiciado en este asunto con los apelantes porque se comprometió a declarar como testigo de cargo, y en efecto se le utilizó como tal, pero se debe hacer un expurgo de su testimonio, porque, como dijo el Juzgado *a quo,*

"Leyendo la declaración suscrita y jurada por Acay, marcada Exhíbit C, se notara que su contenido esta de acuerdo con su testimonio prestado ante el Capitán Castillo, ni se ajusta al prestado por el en la vista de esta causa."

y a la verdad se ha convertido en un testigo mas de la defensa que de la acusación. Esta es probablemente la razón del porque ninguno de los acusados ha declarado, y fué Orbe el único que a su favor presentaron como testigo, cuyo testimonio debe apreciarse con cautela, porque podía habersele incluído en la querella como autor, por haber ordenado la detención de Tan Sik.

Rafael Monteveros fué identificado por We Aw y Tan Sik, y Conrado Tejado lo fué por la misma We Aw y Gervacio Acay. El *alien certificate,* que con el anillo y el par de pendientes estaban envueltos en un papel, fue entregado por Acay a Orbe y se presentó por la defensa como Exhíbit 2.

Ninguno de los testigos de cargo ha indicado a Mauro Failago, como uno de los que se habían ido a la casa de Tan Sik en la noche del 30 de abril. Las pruebas sólo demuestran que cuatro individuos entraron en ella, y eran Quirico Panike, Gervacio Acay, Rafael Monteveros y Conrado Tejado. La única declaración que en el record existe en contra de Failago, es esta de Acay:

"Q. Please state what happened in the office after you arrived?—"A. When we arrived in the office, Mr. Orbe told me to get the affidavit of the Chinese, and while I was taking the affidavit of the Chinese Mauro Failago boxed the Chinese.

"Q. In what part of the body did Mauro box the Chinese?—"A. In the center of the stomach.

"Q. This Mauro Failago you mentioned as having boxed the Chinese when you were taking his affidavit, is he the same Mauro Failago, one of the accused in this case?—"A. Yes, sir." (T.n.t. p. 65)

De este testimonio sólo se infiere que Failago ha incurrido, a lo más, en la falta de malostratos de obra.

El Procurador General sostiene en su alegato que en este asunto se han cometido dos diferentes delitos, uno de robo, penado en el párrafo 5 del Artículo 294, y otro complejo de detención ilegal leve con lesiones menos graves, castigado en el párrafo 3 del Art. 268 del Código Penal Revisado, agravados ambos por las circunstancias de nocturnidad, morada, abuso de superioridad y rompimiento de puerta.

De hecho, la querella fiscal en esta causa, que no ha sido objetada, es por dichos dos delitos, robo y detención ilegal leve con lesiones menos graves.

Teniendo en cuenta que Acay, Panike, Monteveros y Tejado fueron a la casa de Tan Sik para aprehender y detener a este, por la información que Orbe tuviera de que algunos apareceros de la Guihing Plantation vendían copra a los chinos, el robo o hurto que en ella se cometió durante el registro fué ocasional; y según Tan Sik, Panike era quien sacó los ₱120 que tenía en el bolsillo de un pantalón suyo y, de acuerdo con We Aw, Acay fué el que registro su baúl, donde estaban el *alien certificate* de su hijo, el anillo y el par de pendientes de oro de ella, envueltos en un papel. El record no suministra pruebas de que Monteveros y Failago se confabularon con Acay y Panike no solo para detener a Tan Sik sino para robarle también. No se sabe si Monteveros y Failago obtuvieron alguna participación en las alhajas y dinero de que se apoderaron Acay y Panike. Su presencia durante el registro, es la única circunstancia para ellos adversa, pero que dista de ser demonstrativa, mucho menos concluyente, de culpabilidad fuera de duda razonable.

La responsabilidad de Monteveros y Tejado, como autores del delito complejo de detención ilegal leve con lesiones menos graves, esta plenamente probada. Ellos dos, con Acay y Panike, forzaron la entrada e irrumpieron en la casa de Tan Sik en la noche del 30 de abril; sujetaron a éste y, al negarse a ir con ellos, le golpearon, Monteveros con su arma de fuego; le arrastraron fuera de la casa, le embarcaron en un jeep, le metieron en una bodega oscura de la Guihing Plantation, le hicieron comparecer ante su jefe Orbe, le volvieron a golpear, hicieronle firmar el Affidávit Exhíbit A, contra su voluntad y a la fuerza; le embarcaron otra vez en el jeep, para llamar a Luy Chan, su principal, por medio de él, que se frustró por no haber éste abierto la puerta y por hallarse en el lugar el sereno Alejandro Caballero de la tienda; y por último, hacía las 2:00 de la madrugada del día siguiente, le devolvieron a su casa molido a golpes.

La forma en que se hizo la detención ilegal de Tan Sik, lo mismo pudo haberse hecho de día, pero la verificaron de noche porque las informaciones de que se vendían copra a los Chinos se recibieron por la tarde. No es, por lo

tanto, de creer que se han valido de la oscuridad para detenerle. Tampoco es de apreciar el abuso de superioridad, por la sencilla razón de que si la autoridad constituída necesita revestirse de fuerza para detener, con razón, los que no son funcionarios o agentes de la ley, tienen que valerse de la fuerza para detener. Las circunstancias, por lo tanto, de morada y rompimiento de puerta, son las únicas agravantes de apreciar en este caso.

Tan Sik, por la asistencia médica que sus heridas han requerido y su estancia en el Davao Public Hospital, ha incurrido en un desembolso de ₱50.

Se modifica la sentencia contra la cual han apelado Rafael Monteveros, Conrado Tejado y Mauro Failago, sobreseyendo esta causa totalmente en cuanto al último, con la parte proporcional de las costas de oficio, sobreseyéndola también con respecto a los dos primeros, sobre la querella por robo, y condenando a los mismos, Monteveros y Tejado, por el delito complejo de detención ilegal leve con lesiones menos graves, a sufrir la pena indeterminada de cuatro (4) años, nueve (9) meses y once (11) días de prisión correccional a ocho (8) años, ocho (8) meses y un (1) día de prisión mayor, con las accesorias correspondientes, a indemnizar al ofendido Tan Sik en la cantidad de ₱50 y a pagar proporcionalmente las costas. Así se ordena.

Jugo y *Gutiérrez David, MM.*, están conformes.

Se modifica la sentencia.

[Nos. 1880–R & 1881–R. September 10, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee *vs.* ROQUE PACSON ET AL., accused and appellants

1. EVIDENCE; TESTIMONY; WEIGHT OF TESTIMONY OF BOYS OF GOOD CHARACTER.—The testimony of boys of good character is oftentimes entitled to greater weight than that of adults, for they are better able to observe details which may not be noticed by grown-up persons. (People *vs.* Bustos, 45 Phil., 9, 35; People *vs.* Alambra et al., 55 Phil., 578, 582; People *vs.* Esportuno et al., CA–G.R. No. 646–R, promulgated Dec. 17, 1947; Moore on Facts, Vol. II, pp. 1055, 1056.)
2. CRIMINAL LAW; ARSON THROUGH RECKLESS IMPRUDENCE; CASE AT BAR.—In the case at bar, the Fiscal filed two informations, one for homicide and serious physical injuries through reckless imprudence, and the other for damage to property through reckless imprudence. The crime committed, however, was that of arson through reckless imprudence, the homicide, the serious physical injuries, and the damage to property being only consequences of it. The arson was the means by which the homicide, serious physical injuries, and damage to property were effected. (U. S. *vs.* Burns, 41 Phil., 418; U. S. *vs.* Jarrilla, 1 Phil., 53; U. S. *vs.* Apigo, 25 Phil., 631.) * * * In this case, therefore, the crimes of arson, homicide, serious physical injuries, and damage to property constitute complex crimes within the meaning of article 48 of the Revised Penal Code.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Arturo M. Tolentino for appellants.

Assistant Solicitor General Barcelona and *Solicitor Vivo* for appellee.

JUGO, *J.:*

Roque Pacson, Lourdes Domingo, and Ambrosio Francisco were charged before the Court of First Instance of Manila with the crime of damage to property through reckless imprudence in criminal case No. 506 of said court, and with homicide and serious physical injuries through reckless imprudence in criminal case No. 507 of same. In view of the intimate relation between the two cases, by agreement of the parties and with the approval of the court, the two above-mentioned cases were tried together and one decision was rendered in both, acquitting Lourdes Domingo, and convicting Roque Pacson and Ambrosio Francisco and sentencing them to suffer from four (4) months and one (1) day of *arresto mayor* to one (1) year, eight (8) months and one (1) day of *prisión correccional,* to indemnify jointly and severally the heirs of Ana (should be Paula) Elhino in the sum of ₱2,000, Romualdo de Leon in the sum of ₱600, and Aurelio de Leon in the sum of ₱10,950, to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs proportionately. Both appealed.

Aurelio de Leon and his family were occupying as tenants the ground floor of the house of the defendant Roque Pacson, No. 2421 P. Guevarra Street, Manila, whereas Pacson and his family were living on the second floor. Pacson had a weapon carrier which had been converted into a passenger bus and was operated by him in his transportation business, with his co-defendant Ambrosio Francisco as conductor. On the ground floor at the left side of the passageway was the garage for the bus (See plans, Exhibits A and E).

On May 14, 1946, at about six o'clock in the afternoon, Roque Pacson arrived home in said bus with Ambrosio Francisco as his conductor. As Pacson intended to leave early the next morning, he wanted to fill the gasoline tank of the car that same night. Leaving the car on the street in front of his house he entered the garage where the gasoline was stored in drums. As there was no electric light that night, he asked Aurelio de Leon whether he had a flashlight. Aurelio told his son Olegario to look for their flaslight, but it had no battery. Aurelio warned Pacson not to use candlelight and to postpone the pouring of the gasoline to the next day. Notwithstanding this, Pacson called his wife Lourdes Domingo to bring a candle

to be lighted. Lourdes brought the candle and lighted it but the wind blew it out. Romualdo, son of Aurelio de Leon, warned her not to use candle light as it may cause an explosion but she said that she would be very careful. She again lighted the candle but it was also blown out. At that time Romualdo and Olegario were standing at the door of the garage, but when Lourdes lighted the candle for the third time and Roque Pacson and Ambrosio Francisco began pouring the gasoline from one container to another, both boys left and went inside the house. A few seconds afterward, they heard explosions and saw flames starting from the garage and spreading rapidly to the whole house.

When the firemen arrived, the flames were coming from the ground floor of the house and covering all of it. They smelled gasoline from the house. After the fire had been extinguished they found the gasoline drum, Exhibit B–3, inside the garage, which also smelled of gasoline.

During the fire Paula Elhino, 70 years old, mother-in-law of Pacson, jumped from a window of the upper floor and died later due to the burns, and the injuries she received by jumping.

Romualdo de Leon, son of Aurelio, who suffered some burns was taken to the North General Hospital and later to the St. Joseph Hospital where he was confined for several weeks at a cost of ₱600. Other members of Pacson's family were also injured. The properties of Aurelio de Leon which were burned were worth ₱19,020. From this amount should be deducted the sum of ₱700 received by him from Pascon's brother-in-law, leaving a balance of ₱18,320.

The defendants testified that in the evening of May 14, upon arriving at the house of Pacson, the latter parked the truck on the street in front of the house because it was difficult without light to make it enter the narrow garage. They denied having poured gasoline from one drum to another inside the garage. The claimed that they had a lighted candle on the street to guide their steps.

During the pendency of the case the brother-in-law of Pacson paid in behalf of the appellants the sum of ₱700 to Aurelio de Leon and furthermore promised to obtain a position for him in the National Development Company, in order to settle the case amicably. Pacson also promised to execute a deed conveying his lot to Aurelio de Leon, but the transaction was never consummated. No position was found for Aurelio de Leon.

The appellants contend that the prosecution has failed to prove how the fire started and consequently the case must fall, for the reason that the testimony of the boys Romualdo, sixteen years old, and Olegario, twelve, should be disregarded as they were given no weight by the trial

court, and that without their testimony there is no evidence as to how the fire started. This Court finds no reason why the testimony of these boys should be discarded. The testimony of boys of good character is oftentimes entitled to greater weight than that of adults, for they are better able to observe details which may not be noticed by grown-up persons. Moore on Facts, cited with approval by the Supreme Court in the cases of People *vs.* Bustos (45 Phil., 9, 35) and People *vs.* Alambra et al., (55 Phil., 578, 582) and by this Court in the case of People *vs.* Esportuno et al. (CA–G. R. No. 646–B, promulgated Dec. 17, 1947), says:

"'An intelligent boy is undoubtedly the best observer to be found. The world begins to take him by storm with its thousand matters of interest; what the school and his daily life furnish cannot satisfy his overflowing and generous heart. He lays hold of everything new, striking, strange; all his senses are on the stretch to assimilate it as far as possible. No one notices a change in the house, no one discovers the bird's nest, no one observes anything out of the way in the fields; but nothing of that sort escapes the boy; everything which emerges above the monotonous level of daily life gives him a good opportunity for exercising his wits, for extending his knowledge, and for attracting the attention of his elders, to whom he communicates his discoveries. The spirit of the youth not having as yet been led astray by the necesities of life, its storms and battles, its factions and quarrels, he can freely abandon himself to everything which appears out of the way; his life has not yet been disturbed by education, though he often observes more clearly and accurately than any adult. Besides, he has already got some principles; lying is distasteful to him, because he thinks it mean; his is no stranger to the sentiment of self-respect, and he never loses an apportunity of being right in what he affirms. Thus he is, as a rule, but little influenced by the suggestion of other, and he describes objects and occurrences as he has really seen them. We say that an intelligent boy is as a rule the best witness in the world.' (As quoted in Moore on Facts, Vol. II, pp. 1055, 1056)."

The circumstances of this case are such that even giving little weight to the testimony of the boys, the conclusion is clear that the fire started from the gasoline improperly handled. It could not have ignited spontaneously. It is also well known that the gas evaporating from the liquid gasoline is easily ignited by a flame, even if there is no contact between the flame and the liquid gasoline itself (Encyclopaedia Britannica, article on Combustion, Vol. 6 p. 99). This is a fact well known by all motor vehicle operators.

It should also be considered that Pacson stored gasoline in his premises without permit or license. This in itself is an act of negligence (12 A. L. B., 1297).

With regard to the nature of the crime committed the fiscal filed two informations, one for homicide and serious physical injuries through reckless imprudence, criminal case No. 507 of the Court of First Instance of Manila, and other for damage to property through reckless imprud-

ence, criminal case No. 506 of the same court. The crime committed, however, was that of arson through reckless imprudence, the homicide, the serious physical injuries, and the damage to property being only consequences of it. The arson was the means by which the homicide, serious physical injuries, and damage to property were effected. In the case of U. S. *vs.* Burns (41 Phil., 418), it was held that:

"CRIMINAL LAW; DISTINCT CRIMES RESULTING FROM ONE ACT; PENALTY.—Under a complaint charging the accused with setting fire to an outo in the basement of an inhabited house, whereby said house was destroyed and one of its inmates burned to death, it is held that the accused is guilty of two distinct offenses, to wit, arson and homicde, resulting from the same act, and that, in accordance with article 189 of the Penal Code, the penalty of the more serious crime must be imposed in its maximum degree."

In this case, therefore, the crimes of arson, homicide, serious physical injuries, and damage to property constitute complex crimes within the meaning of article 48 of the Revised Penal Code which reads as follows:

"ART. 48. *Penalty for complex crimes.*—When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." (As amended by Act No. 4000.)

The arson, however, was not committed intentionally but through reckless imprudence (U. S. *vs* Jarrilla, 1 Phil., 53; U. S. *vs.* Apigo, 25 Phil., 631).

In view of the foregoing, the judgment of the trial court is modified by sentencing the defendants Roque Pacson and Ambrosio Francisco each to suffer from four (4) months of *arresto mayor* to two (2) years and four (4) months of *prisión correccional,* to indemnify jointly and severally the heirs of Paula Elhimo the sum of ₱2,000; Romualdo de Leon in the sum of ₱600, and Aurelio de Leon in the sum of ₱18,320, with the corresponding subsidiary inprisonment in case of insolvency, and to pay the proportional part of the costs. With costs against the appellants. It is so ordered.

Gutierrez David and *De la Rosa, JJ.,* concur.

Judgment modified.

[No. 2232-R. September 13, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JUAN AURILLO *alias* JUAN PUTI, defendant and appellant.

EVIDENCE; CRIMINAL CASES; DOUBT RESOLVED IN FAVOR OF ACCUSED; CASE AT BAR.—There being some doubt as to how the accused gained entrance into the house, the evidence not disclosing the utter impossibility of his having done so through any way

other than the window, and pursuant to the legal principle that all doubts in criminal cases shall be resolved in favor of the accused, the herein appellant is held guilty of simple theft instead of robbery.

APPEAL from a judgment of the Court of First Instance of Capiz. Hernandez, J.

The facts are stated in the opinion of the Court.

Manuel A. Arbues for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Angeles* for appellee.

DIZON, *J.:*

This is an appeal from the decision on the Court of First Instance of Capiz finding the appellant Juan Aurillo *alias* Juanito Puti guilty of simple theft, instead of roberry as charged, and sentencing him to suffer an indeterminate penalty of not less than three (3) months and eleven (11) days of *arresto mayor* nor more than one (1) year, eight (8) months and twenty-one (21) days of *prisión correccional,* to indemnify the offended parties in the sum of ₱575 representing the value of the unrecovered stolen articles, with subsidiary imprisonment in case of insolvency not exceeding 1/3 of the principal penalty, and to pay the costs. The four different assignments of error made in appellant's brief may be boiled down to one, namely, that the lower court erred in finding the evidence sufficient to establish his guilt of their reasonable doubt.

According to the evidence when Juan Arduo woke up in his house in barrio Talon, Capiz, Capiz on the morning of September 5, 1947 he found a part of the wall thereof broken and the wire fastening a window cut. After inspecting the house and checking up their belongings Arduo and his wife, Jovita Balbona, discovered that their trunk had disappeared together with the following contents:

"One ring (golden) valued	₱25.00
"One bracelet (golden) string type valued	10.00
"One necklace (golden) chain type valued	5.00
"Cash money paper bills (10 pcs. at ₱20)	200.00
"Cash money paper bills (10 pcs. at ₱10)	100.00
"Coins at .50 denomination	60.00
"Coins at .20 denomination	90.00
"Coins at .10 denomination	85.00
"Coins at .05 and ₱.01 denomination	25.00
"Total	₱600.00"

That same morning Arduo reported the matter to the chief of police who, in turn, sent two policemen with him to make the corresponding investigation. Upon their arrival at the scene of the robbery they were informed that the missing trunk had been found empty in the nearby bushes. Suspicions fell particularly upon the appellant firstly because on three different occasions he had stayed in the house of the offended parties in company of their nephew Bernardo Burlate, and secondly, because he had been seen

near the premises on the night of the robbery. Knowing that on the night of September 9, 1947 there would be a dance in the school building of the neighboring municipality of Ibisan because of the town fiesta, Arduo requested his brother-in-law, Regalado Balbona, and Rosalito Bailador to attend the same with instructions to observe the appellant closely should he appear at the dance. That night, as expected, the appellant was at the dance, and as soon as Bailador saw him wearing the ring Exhibit A, which he readily recognized as one of the pieces of jewelry lost because he himself used to borrow it, he told Balbona to notify Arduo, who was then waiting in a nearby place. Balbona notified Arduo and both immediately went to the schoolhouse to wait for the appellant. When a few minutes later they saw him coming out Balbona approached him and taking hold of his hand said: "Friend, you are wearing the ring of my brother-in-law.", and inasmuch as the appellant attempted to pull out the ring from his finger, presumably to throw it away, Balbona and Arduo grappled with him and took the ring themselves from his finger. A policeman who was nearby rushed to the scene of the scuffle and after a brief investigation took all the parties to the municipal building. Upon their arrival there, however, the appellant tried to run away but was overtaken and brought back by Arduo and Balbona who pursued him at the request of the policeman. Upon being informed that the ring Exhibit A taken from the appellant was one of the several articles stolen from the house of the Arduos in Talon, Capiz, the police authorities of Ibisan delivered the same to the chief of police of Capiz who took steps to file the corresponding complaint.

The appellant relies upon an alibi and also claims that the ring Exhibit A belonged to him.

It is contended that the ring in question originally belonged to appellant's sister who, in 1946, came from Iloilo to their barrio, and since she and her husband had no money for their transportation back to Iloilo their mother gave her ₱25 and in return she left the ring. Explaining how the ring finally came into his possession the appellant testified: "My mother told me that my sister had no money for their transportation back to Iloilo and she gave them ₱25 from the money which belonged to me and my mother gave me the ring." We find this story hard to believe supported as it is only by the testimony of the appellant himself. Neither his mother nor his sister testified to corroborate him. If to this we add the positive testimony of the Arduo spouses and of Rosalito Bailador regarding the identity of the ring Exhibit A and the fact that when taken to the municipal building of Ibisan after the scuffle in front of the school building the appellant tried to escape, the conclusion becomes irresistible that the ring in question was really one of the pieces of jewelry stolen from

the house of the offended parties. Had the appellant really claimed from the beginning to be the owner of the ring in question, instead of trying to flee he would have stayed showing indignation against Arduo and his brother-in-law and he would perhaps have charged them criminally.

Appellant's alibi, on the other hand, is strongly belied by the evidence for the prosecution. In this connection it appears that Regalado Balbona saw him and talked to him on the night of September 4, 1947 near the seashore in barrio, Talon, about ten brazas away from the house of the offended parties, and that upon learning the following day that his brother-in-law had been robbed he made known to him immediately his suspicions against the appellant. Appellant's presence in and around the house robbed was, therefore, established. Furthermore, the witnesses relied upon to support appellant's alibi incurred in such material contradictions that this Court cannot consider their testimony as reliable.

Upon all the foregoing we believe and so hold that appellant's guilt has been established beyond reasonable doubt.

The lower court, as stated heretofore, found the appellant guilty of simple theft instead of robbery as charged upon the following grounds:

"Las declaraciones de los ofendidos sobre la manera como se ha fracturado el tabique o como se habierto la ventana no son muy satisfactorias a juicio del Tribunal, pues no se explicá cómo los esposos usaban alambre para amarrar una ventana que no es lo ordinario en los barrios. Por otro lado, había bastantes personas dentro de la casa y no se ha explicado que no hayan precibido ningún ruido si realmente se ha fracturado el tabique de la misma. Nos inclinamos a creer que los esposos se descuidaron de cerrar la puerta en aquella ocasión y el acusado, estando familiarizado con las puertas de la casa, pudo entrar en ella con facilidad. Propiamente, por consiguiente, el delito debe calificarse simplemente de hurto. Es verdad que los esposos declararon que el baúl estaba fracturado, pero ninguno de ellos declaró que el baúl estaba bajo llave, ni se ha exhibido dicho baúl." (Appellant's brief, pp. 19–20.)

The Solicitor General, on the other hand, maintains that the crime actually proven was that of robbery the appellant having gained entrance into the house not through the door but through the window which he forced open by destroying the wall and cutting the wire which fastened the window.

After a careful consideration of the evidence bearing upon this particular point, we are more inclined to believe with the lower court that there is some doubt as to how the appellant gained entrance into the house, the evidence not disclosing the utter impossibility of his having done so through any way other than the window aforementioned. All doubts in criminal cases being resolved in favor of the accused, we believe and so hold that the conclusion arrived at by the lower court should be sustained.

The penalty imposed upon the appellant being in accordance with the facts and the law applicable thereto the same is hereby affirmed.

Concepcion and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 1375–R. September 15, 1948]

VICENTE MADRIGAL, plaintiff and appellant, *vs.* ANG SAM TO, KUA CHEE CHAY, ANG TAN, TAN TEK, PUA CHING KONG, ANG KHU, LIM AO, YAP SAY, and CHUA SO, defendants and appellees.

LEASE; MONTH TO MONTH LEASE; NOTICE OF EXPIRATION OF LEASE TO LESSEE NOT NECESSARY; RULE APPLIES AS WELL TO SUBLESSEES; EXTENT OF THE RIGHT OF SUBLESSEES.—A lease contract on a month to month basis between the lessor and lessee expires at the end of the month, without necessity of any special notice to that effect, unless renewed for the following month by express or tacit agreement between the parties. This, for obvious reasons, necessarily applies to the sublease contract between the lessee, as sublessor, and the sublessees, who cannot claim any right to the premises better than that of their sublessor. It may be true that the lessee and the sublessees had occupied the premises in question for a period of from 8 to 12 years, before the present action was brought, but it is none the less true that there had never been any privity between the lessor, as owner of the leased premises, and the sublessees. If the rights of the latter, therefore, must be recognized at all it can be only and at most to the same extent as the right of the lessee himself. In other words, the sublessess can only assert such right of possession as could have been granted them by their sublessor, their right or possession depending entirely upon that of the latter.

APPEAL from a judgment of the Court of First Instance of Manila. Dinglasan, J.

The facts are stated in the opinion of the court.

Bausa & Ampil for appellant.
Constancio M. Leuterio for appellees.

DIZON, *J.:*

This case of unlawful detainer was commenced by Vicente Madrigal against Ang Sam To, Kua Chee Chay, Ang Tan, Tan Tek, Pua Ching Kong, Ang Khu, Lim Ao, Yap Say and Chua So in the Municipal Court of Manila where, after trial, judgment was rendered in his favor on February 19, 1946 against all the defendants, which judgment was amended by an order issued on the 28th of the same month and year (Record on Appeal pp. 13–15, 17–18). The defendants, except Ang Sam To, appealed to the Court of First Instance of Manila where, after trial, judgment was rendered whose dispositive part is as follows:

"In view of the foregoing considerations, the Court finds that the plaintiff's complaint in so far as the defendants-appellants herein are concerned, is not true, and therefore renders judgment for the defendants to recover costs against the plaintiff."

Plaintiff appealed from the above and now submits that the lower court committed the following errors:

I

"The lower court erred in not finding that the defendants-appellees may be ejected from the property without necessity of notice to vacate.

II

"The lower court erred in not finding that even if notice to vacate were necessary, the defendants-appellees were duly notified to vacate the premises involved in this appeal.

III

"The lower court erred in not finding that as sublessees of the defendant Ang Sam To, the rights of defendants-appellees to the use occupancy of the premises are subordinated to those of their grantor, the lessee, Ang Sam To.

IV

"The lower court erred in not finding that as the lessee, Ang Sam To, may be ejected from the premises, the latter's sublessees, the defendants-appellees herein, may likewise be ejected therefrom.

V

"The lower court erred in not ordering the ejectment or eviction of the defendants-appellees from the premises subject of this proceeding.

VI

"The lower court erred in not ordering defendants-appellees to pay plaintiff-appellant the rentals due on the premises by reason of their occupation thereof.

VII

"The lower court erred in denying plaintiff-appellant's motion to set aside decision and for new trial.

Appellees submitted no brief in this appeal.

It appears that the appellant is the owner of the building located on Juan Luna Street (Nos. 561–579) Manila, which had been leased to Ang Sam To even before the war on a month to month basis. Ang Sam To, in turn, subleased one-half thereof to the now appellees upon a monthly rental agreed upon by and between them. Although the sublease apparently was known to the lessor the latter dealt directly and exclusively with Ang Sam To who paid the rents for the whole building. Appellees' contention that Ang Sam To was the lessor's "encargado" is completely unfounded—as far as the record shows.

The building in question having been damaged to a certain extent during the battle for the liberation of Manila in 1945 the appellant verbally told Ang Sam To to vacate the premises in order that extensive repairs therein might be made. This verbal notice was confirmed in writing on June 1, 1945 and reiterated on July 12 of the same year (Exhibits A and B). In view of Ang Sam To's plea that he be allowed to remain in possession of the property while repairs were being made, the appellant agreed to allow him to continue occupying one-half of the second floor of the building at the agreed monthly rental of ₱160, Ang Sam To agreeing to

vacate the rest of the premises. This notwithstanding Ang Sam To and the sublessees failed and refused to vacate as agreed upon, in view of which the appellant, in a letter of November 10, 1945, (Exhibit C), terminated the lease and reiterated his demand that the occupants vacate the premises on or before the 25th of said month and year. Subsequently, the present action was commenced

Upon these facts the only issue involved herein is whether or not the appellant may eject the appellees from the premises in question.

There is no question that the lease between the appellant and his lessee, Ang Sam To, was on a month to month basis. Ang Sam To's sublessees not being entitled to claim any right to the premises better than that of their sublessor it is obvious that the sublease is also to be understood as one on a month to month basis. Corollary to this is that the lease contract between the appellant and Ang Sam To expired at the end of each month, without the necessity of any special notice to that effect, unless renewed for the following month by express or tacit agreement between the parties. This, for obvious reasons, necessarily applies to the sublease contract between Ang Sam To, as sublessor, and the herein appellees, as sublesseees.

In the case before us there could have been no express or implied renewal of the contract of lease after November, 1945 in view of the fact that on the 10th of said month and year the appellant served upon his lessee, Ang Sam To, a written notice terminating the lease and requiring him to vacate the premises on or before the 25th of said month (Exhibit C). Said notice was duly received by Ang Sam To. The sublessees, appellees herein, deny having been served with the said notice but we are of the opinion that their contention is not supported by the preponderance of the evidence upon this point. In this connection there appears at the bottom of Exhibit C the notation that when the representative of the appellant attempted to serve the appellees with a copy of th aforesaid lettter Exhibit C they all refused to sign. It appears likewise that one of the appellees, Pua Ching Kong, and presumably all the others, knew of the fact that their sublessor, Ang Sam To, had been advised by the appellant to vacate the premises (trans. October 7, 1946, pp. 7–9). On the other hand the testimonial evidence for the appellant shows positively that the appellees were served with the aforesaid notice (trans. of August 30, 1946, p. 11). It is upon these considerations that, in our opinion, the clear preponderance of the evidence militates in favor of appellant's contention that the lessee and all the sublessees had received due notice to vacate the premises in November 1945.

It may be true that Ang Sam To and the appellees had occupied the premises in question for a period of from 8 to 12 years, before the action was brought, under the cir-

cumstances mentioned heretofore but it is none the less true that there had never been any privity between the appellant, as owner as of the leased premises, and the appellees. If the right of the latter, therefore, must be recognized at all it can be only—and at most—to the same extent as the right of Ang Sam To himself. In other words, the appellees can only assert such right of possession as could have been granted them by their sublessor, their right of possession depending entirely upon that of the latter. In the circumstances of case we have no doubt that the appellant had the right to compel Ang Sam To to vacate the entire first floor and one-half of the second floor of the property in question, it being evident that Ang Sam To did not need the same for dwelling purposes. The fact that the appellees, as sublessees, had never failed to pay Ang Sam To the rental agreed with the latter as consideration for the sublease is entirely beside the point and need not be discussed herein in detail. Neither is the claim that the appellees had never been notified by the appellant to vacate the premises of any further importance after we have ruled that, legally, they are not entitled to any such notice and that even if they were, the preponderance of the evidence shows that the appellant served them with a copy of the notice Exhibit C, although they refused to sign the original thereof.

Upon all the foregoing, we are clearly of the opinion, and so hold, that the appellant is entitled to recover the possession of the premises described in the complaint and occupied by the herein appellees. Consequently, the appealed judgment is hereby reversed and another should be entered ordering the appellees Kua Chee Chay, Ang Tan, Tan Tek, Pua Ching Kong, Ang Khu, and Lim Ao to vacate the half portion of the upper floor of the building described in the complaint opposite the other half formerly occupied by Ang Sam To, ordering the appellees Yap Say and Chua So to vacate the lower floor (entresuelo) and the ground floor (saguan) of the same building, and ordering all the said appellees to pay the appellant, jointly and severally, the rentals of the aforesaid premises at the rate of ₱160 per month from September 1, 1945 until they vacate and surrender the same to the appellant. Costs against the appellees.

Concepcion and *De Leon, JJ.*, concur.

Judgment reversed.

[No. 1887-R. September 15, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* NEMESIO AZUCENA, defendant and appellant

1. CRIMINAL LAW AND PROCEDURE; PRELIMINARY INVESTIGATION; RIGHT TO PRELIMINARY INVESTIGATION AND PURPOSE THEREOF UNDER THE RULES OF COURT.—Although the provisions of the former Code of Criminal Procedure (General Order No. 58) on preliminary investigation, which Supreme Court decisions (U. S. *vs.*

Lete, 17 Phil., 79; U. S. *vs.* Grant et al., 18 Phil., 122) have construed, are not the same as those contained in the Rule 108 of the Rules of Court, yet, there is no question that the right of every defendant to such preliminary investigation and the purpose of the same subsist in the existing legislation.

2. ID.; ID.; MANNER OF CONDUCTING PRELIMINARY INVESTIGATION; NON-OBSERVANCE OF PROCEDURE IS REVERSIBLE ERROR; CASE AT BAR.—The procedure to be followed by the Courts of First Instance in conducting preliminary investigation, is the same as that provided in sections 5, 6 and 7 of Rule 108 of the Rules of Court that is prescribed for Justices of the Peace and other officers authorized to conduct preliminary investigations. That procedure has not been followed in the case at bar, and the defendant, through his counsel, expressly announced that he did not waive his right to a second preliminary investigation. Consequently, the trial judge encroached in this case upon a substantial right of the defendant and committed a reversible error.

APPEAL from a judgment of the Court of first Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Antonio L. Azores for appellant.

Assistant Solicitor General Kapunan, Jr. and *Solicitor Villamor* for appellee.

FELIX, *J.:*

At about 7 o'clock in the evening of November 4, 1946, in San Pablo City, a convocation had been concluded in the premises of the Laguna Academy when a free-for-all ensued among those present. Wenceslao Retizos, the principal of the Academy, called for help, and Ricardo Emralino, a student thereat, wrested an open knife from Felicisimo Ticson, who was among those present, and handed it to Retizos. Not long afterwards, Ricardo Emralino was suddenly attacked several times with a screw driver, and being thus injured, he ran out of the school premises and proceeded that same evening to the San Pablo City Hospital where he was treated for a punctured wound in the lower margin of the chest of the right clavicular line and was confined thereat until November 14, 1946.

At the investigation conducted, by the city attorney of San Pablo, it appeared that Nemesio Azucena, a friend of Ticzon, was the one that attacked and wounded Emralino with the screw driver, so on November 14, 1946, the corresponding information subscribed by said official was filed in the municipal court of said city, charging Nemesio Azucena with the crime of attempted homicide. A warrant was issued for the arrest of the accused who promptly filed a bail bond for his provisional release. A preliminary investigation was then conducted by the judge of the municipal court wherein the defendant was heard, after which said municipal judge dismissed the information and cancelled appellant's bond, for the reason that in his opinion there was no clear evidence of defendant's intention to kill.

On January 29, 1947, another information, subscribed by the same city attorney, was filed in the court of First Instance of Laguna, charging Nemesio Azucena with the same crime of attempted homicide, and on March 3, 1947, the Court issued the corresponding order for the arrest of the defendant. On March 20, 1947, Nemesio Azucena was ordered discharged from custody after filing the corresponding bail bond. The case was then called for consideration, and after several postponements, the defendant was finally arraigned on June 2, 1947. Having entered a plea of not guilty, the case proceeded on that same day for trial. Before the commencement of the hearing, the defendant petitioned in open court for a new preliminary investigation which the court denied. So his counsel stated:

"The accused humbly submits to the resolution of this Honorable Court denying the petition for second preliminary investigation. It is not, however, to be understood that the accused waives his right to said second preliminary investigation."

At the conclusion of the hearing, the court found the defendant guilty of less serious physical injuries and accordingly sentenced him to two (2) months and twenty-one (21) days of *arresto mayor* and to pay the costs. From this decision the defendant appealed, and in this instance his counsel submits that the lower court erred:

"I. In not granting, despite the request of the accused, a second or new preliminary investigation for the reason that the municipal judge of the City of San Pablo, after conducting the preliminary investigation, gave the opinion that the crime charged had not been committed, and accordingly ordered the discharge of the accused.

"II. In finding that "the accused assailed the offended party," and that "in view of this personal assault said Ricardo Emralino received four wounds."

"III. In declaring that defense witness, Mr. Retizos, did not make any investigation of the incident which took place in the high school of which he was principal, and in not giving due weight and credence to this testimony; and,

IV. In concluding that the accused is guilty of the crime of less serious physical injuries beyond reasonable doubt, and in sentencing him to two (2) months and twenty-one (21) days of *arresto mayor* and to pay the costs."

It is already settled in our jurisprudence that:

"In all criminal cases, the defendants, outside of Manila, are entitled to a preliminary investigation, which being a personal right, may be waived by the defendant. (U. S. *vs.* Lete, 17 Phil., 79.)

"The object of the preliminary investigation before the defendant is placed on trial, is to secure the innocent against hasty and malicious prosecutions, and to protect him from a public accusation of a crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless, unecessary and expensive prosecutions." (U.S. *vs.* Grant et al., 18 Phil., 122.)

Although the provisions of the former Code of Criminal Procedure (General Order No. 58) on preliminary investigations, which the preceding authorities construe, are not the same as those contained in Rule 108 of the Rules of Court, yet, there is no question that the right of every de-

fendant to such preliminary investigation and the purpose of the same subsist. In the case at bar, the municipal judge of San Pablo held a preliminary investigation in which the defendant availed himself of his right to testify and to present witnesses with the result that the municipal judge dismissed the information and canceled the bond furnished by the accused.

"After a preliminary examination upon a criminal complaint, the Justice of the Peace was of opinion that the crime charged had not been committed and discharged the accused. A so-called *report* of the proceedings at the preliminary examination was forwarded to the provincial fiscal whereupon an information was filed in that court, and the accused brought to trial thereon without further proceedings. Upon arraignment, counsel for the accused, declined to proceed on the ground that no order remanding the accused for trial had been issued by a competent magistrate as the result of a preliminary investigation held in accordance with law. The trial judge was of opinion that the report of the proceedings of the preliminary trial disclosed a reasonable probability that the crime had been committed and that the accused had committed it; that the Justice of the Peace had erred in discharging the accused; and ordered the parties to proceed with the trial. Counsel for the accused there and then excepted to the ruling of the court insisting on the right of the accused to a preliminary trial as prescribed by law, and the accused, when called upon to plead, stood mute, so that the court was compelled to direct the entry of a plea of not guilty in his behalf. *Held:* That the trial court erred in bringing the accused to trial, over his objection, in the absence of an order remanding him for trial based upon a preliminary trial held in accordance with the provisions of law.

"*The right of an accused person not to be brought to trial except when remanded therefor as the result of a preliminary examination before a committing magistrate, or, within the City of Manila, not to be brought to trial except in pursuance of like proceeding or the proceeding substituted therefor by law, is a substantial one.* Its denial, over the objection of the accused, is prejudicial error, in that it subjects the accused to the loss of life, liberty or property without due process of law." (U. S. *vs.* Marfori, 35 Phil., 666–667.)

In this case the Supreme Court had the following to say:

"The order of the justice of the peace discharging the accused did not operate as a final acquittal, and was not a bar to the rearrest of the accused and his prosecution for the offense with which he was originally charged. *If the fiscal was not satisfied with the action of the Justice of the Peace in the premises, he could have secured the arrest of the accused upon a new complaint and sought an order remanding the accused for trial, in a second preliminary investigation had before either the Justice of the Peace who held the first investigation or before the Judge of the Court of First Instance in the exercise of his functions, as a committing magistrate.* (Act No. 1627, Sec. 37.) But it would manifestly defeat the end sought to be attained by the provisions of law for the holding of preliminary investigations if either the fiscal, or the trial judge, or both acting together, were permitted to make use of the record of the proceedings had before a Justice of the Peace, at a preliminary trial, as a result of which the accused was discharged for the purpose of bringing the accused to trial, despite the order of discharged, and over his objection, based on the ground that he has not been remanded for trial as a result of a preliminary trial.) (U. S. *vs.* Marfori, 35 Phil., 670–671.)

We repeat again that the construction of the law on preliminary investigations given by the Supreme Court in the just cited case of Marfori refers to the provisions of General Order No. 58 on the subject, and although the investigation prescribed nowadays under the Rules of Court is not exactly the same, yet, we find that the right of every defendant to a preliminary investigation is substantially retained in the existing legislation. Section 11, Rule 108 of the Rules of Court prescribes:

"SEC. 11. *Rights of defendant after arrest.*—After the arrest of the defendant and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall also be informed of the substance of the testimony and evidence presented against him, and, if he desires to testify or to present witnesses or evidence in his favor, he may be allowed to do so. The testimony of the witnesses need not be reduced to writing but that of the defendant shall be taken in writing and subscribed by him."

Section 4 of said Rule 108 also prescribes:

"SEC. 4. *Investigation by the Judge of the Court of First Instance.*—Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation *in the manner provided in the following sections*, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the merits."

The manner of conducting the preliminary investigation provided in the following sections of this just quoted section 4, is the procedure outlined in sections 5, 6 and 7 of said Rule 108, which is the same procedure to be followed by the justice of the peace or any other officer authorized to conduct preliminary investigations. This procedure has not been followed in the case at bar, and the defendant, through his counsel, expressly announced that he did not waive his right to a second preliminary investigation. Consequently, the trial judge encroached in this case upon a substantial right of the defendant and committed a reversible error.

In view of this opinion, we believe unnecessary to discuss the other errors assigned by appellant to the lower court.

Wherefore, the decision appealed from is hereby set aside and annulled and the case remanded to the lower court for preliminary investigation and for such action as may become proper therefrom. The bail furnished by appellant for his provisional release during the pendency of this appeal shall be renewed if he wants to be at liberty during the development of the proceedings for which this case is remanded to the lower court. Cost are taxed *de officio*. So it is ordered.

Torres, Pres. J., and *Endencia, JJ.*, concur.

Decision set aside and annulled; case remanded with instructions.